South Dakota

Discharge Planning

PASRR Reference Manual

October 2011

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PASRR HISTORY AND PROCESS

The Omnibus Budget Reconciliation Act of 1987 mandated that all individuals regardless of funding source who apply for admission to a Medicaid certified nursing facility including swing bed facilities must be screened to determine if they have mental illness, mental retardation or developmental disabilities. In 1989 South Dakota Medicaid provided written notification to providers regarding what was then known as the preadmission screening annual resident review. Educational sessions were held throughout the State. In 1989 the State of South Dakota provided facilities with a pre-screening tool to utilize to determine if a referral to Adult Services & Aging was required. The general content in the pre-screening tool initiated in 1989 has not changed from the current tool in use today.

Providers complete a pre-screening evaluation using a State approved form to identify individuals who meet specified criteria. Providers refer everyone meeting the specified criteria to Adult Services & Aging (ASA) staff for a Level I screening. The ASA staff determines whether individuals meet the nursing facility level of care criteria and whether they are suspected of having serious mental illness (SMI), mental retardation (MR) or developmental disability (DD). The nursing facility level of care process assesses the client's medical and physical condition to determine whether he/she requires long term nursing facility care.

If the individual applying for admission to a nursing facility or swing bed has or is suspected of having a diagnosis of SMI and/or MR/DD and does not meet Level I exemption or categorical determination criteria, the ASA staff complete a referral to the Department of Social Services Division of Community Behavioral Health Services (DCBHS) and or the Department of Human Services Division of Developmental Disabilities (DDD) for Level II resident review. The Level II resident review is conducted to determine the need for specialized services or additional services that will benefit the individual. South Dakota defines "Specialized services" for persons with SMI as a "Long Term Inpatient Psychiatric Hospitalization at Mickelson Center for the Neurosciences (MCN)." However, for persons with MR/DD specialized services are continuous, aggressive generic treatments, therapies or training that prevent or slow down the regression or loss of current optimal functioning.

Under the PASRR provisions, the Division of Developmental Disabilities is responsible to assure that anyone who has a developmental disability and/or mental retardation that was attained prior to the age of 22 is appropriately placed in a long-term care facility. Often times Community Service Providers are able to provide the same level of skilled nursing services in the community as those provided by the nursing facility. Each Community Service Provider provides a variety of healthcare services. Not all services are available at all centers. Division staff will work with each nursing facility to determine the best possible placement on an individual basis.

The Division of Community Behavioral Health Services and/or Division of Developmental Disabilities makes the final determination regarding specialized services needs for the individual.

PASRR AND SWING BED

Even though a swing-bed facility is technically not a "certified nursing facility (NF)," it still has to comply with some of the nursing facility requirements. Those requirements include PASRR. Section 1912 of the Social Security Act defines swing beds and clearly requires that swing-bed facilities comply with all requirements of section 1919(b) through 1919(d) with respect to the NF services offered. That includes 1919(b)(3)(F), which restates the essential PASRR requirements from 1919(e) in relation to the Resident Assessment Instrument (RAI).

PASRR AND CRITICAL ACCESS HOSPITAL

The central issue for the critical access hospital is whether the swing bed is Medicaid-certified. If they are, the hospital *must* comply with PASRR. The State cannot pay providers for services provided to occupants in a Medicaid-certified swing bed of a critical access hospital if PASRR was not completed prior to admission to the swing bed. In addition the state cannot receive federal financial participation monies for services provided to occupants of these beds. PASRR applies to all individuals in the Medicaid-certified swing beds regardless of the acuity of the individual in the swing bed (i.e. skilled, intermediate etc.).

PASRR DEFINITIONS FOR MENTAL ILLNESS, MENTAL RETARDATION, & DEVELOPMENTAL DISABILITIES

PASRR- Pre-Admission Screening Resident Review

PRE-SCREENING EVALUATION – a review by the provider utilizing the State form "Screening for admissions to the Nursing Facility or Swing Bed for Mental Illness, Mental Retardation, Developmental Disabilities" that determines if an individual meets criteria for Level I screening.

HOSPITAL EXEMPTION – an exemption from the PASRR process for individuals who meet the federal hospital exemption criteria and the inpatient hospital provider has completed the State approved hospital exemption form.

LEVEL I SCREENING- the Department of Social Services shall conduct a Level I (PAS) screening that identifies each individual who is seeking nursing facility level of care services who may have a mental illness.

LEVEL II RESIDENT REVIEW - the Division of Community Behavioral Health Services shall conduct a Level II resident review (RR) that determines the appropriateness of nursing facility services and specialized services for individuals identified in the Level I pre-admission screening. The Level I pre-admission screening and the Level II resident review make up the preadmission screening resident review, or PASRR, which is the process that is completed when any individual with a mental illness applies to reside in a nursing facility or swing bed. Each individual is reviewed for appropriateness of placement, regardless of the source of payment for the nursing facility or swing bed services. A determination whether or not an individual can benefit from specialized services is made.

CONTINUED STAY REVIEW- a review to determine if an individual in the nursing facility or swing bed remains appropriate and if specialized or other services are needed.

MENTAL ILLNESS - a diagnosis regarding schizophrenia; mood, paranoid, panic, or other severe anxiety disorder; somatoform disorder; personality disorder; other psychotic disorder as defined in the DSM-IV-TR. Mental retardation, epilepsy, other developmental disability, alcohol or substance abuse, or brief periods of intoxication, or criminal behavior do not, alone, constitute mental illness;

SEVERE MENTAL ILLNESS- a substantial organic or psychiatric disorder of thought, mood, perception, orientation, or memory which significantly impairs judgment, behavior, or ability to cope with the basic demands of life. Mental retardation, epilepsy, other developmental disability, alcohol or substance abuse, or brief periods of intoxication, or criminal behavior do not, alone, constitute severe mental illness.

SIGNIFICANT CHANGE IN STATUS AS IT RELATES TO PASRR as defined in the CMS Long Term Care Resident Assessment Instrument.

MH SPECIALIZED SERVICES- active treatment received in an inpatient setting. i.e. the geriatric unit at the Mickelson Center for the Neurosciences.

MR/DD SPECIALIZED SERVICES – continuous, aggressive generic treatments, therapies or training that prevents or slows down the regression or loss of current optimal functioning.

COMMUNITY SERVICE PROVIDERS – provide services which may include residential, vocational, service coordination, and nursing care. Adjustment Training Centers provide residential options for people, such as group homes and supervised apartments. Community living training and residential expanded follow-along are also provided for those who are living on their own or are working toward that goal. Vocational opportunities may include working in the agency workshop, job coaching and pre-vocational training for individuals looking for community jobs and vocational expanded follow-along for those working in the community.

MENTAL RETARDATION – a significantly sub average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a person's performance.

DEVELOPMENTAL DISABILITY – is any severe chronic disability of a person that:

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
(2) Is manifested before the person attains age twenty-two;
(3) Is likely to continue indefinitely;
(4) Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and;
(5) Reflects the person's need for an array of generic services, met through a system of individualized planning and supports over an extended time, including those of life-long duration.

PURPOSE OF PASRR

Ensure that Swing Bed and Nursing Facility (NF) applicants & residents with Serious Mental Illness (SMI) or Mental Retardation (MR) are:

- Identified;
- Placed Appropriately (least restrictively)
  Evaluated and admitted or allowed to remain in a NF only if they can be appropriately served in a NF; and
- Provided with the MI/MR services they need, including Specialized Services (SS).

The State PASRR program directs hospitals, swing beds and nursing facilities to complete a PASRR pre-screening evaluation to determine if a resident needs to be referred for a Level I screening.

PASRR PRE-SCREENING EVALUATION

This pre-screening evaluation form is titled "Screening for admissions to the Nursing Facility or Swing Bed for Mental Illness, Mental Retardation, Developmental Disabilities."

Providers must complete the pre-screening evaluation form for every individual who is planning to admit into a Medicaid certified nursing facility or swing bed regardless of pay source.

Provider responses on the pre-screening evaluation form will determine who must be referred for a Level I screening.

Providers must complete the pre-screening evaluation form when requesting a resident review for an individual admitted to the swing bed or nursing facility through the hospital exemption notification prior to the end of their 30 day time limited stay.

PASRR pre-screening evaluation question #1

1. Does this individual have a condition of, or is there any presenting evidence that may indicate the individual may have mental retardation or developmental disabilities?

   Response options are: Yes, No, Unknown

PASRR pre-screening evaluation question #2

2. Is the individual being referred by an agency that services persons with mental retardation or other developmental disabilities and has the individual been determined to be eligible for that agency's services?

   Response options are: Yes, No, Unknown

PASRR pre-screening evaluation question #3

3. Does this individual have a condition of, or is there any presenting evidence that may indicate the individual may have mental illness? (Indicate a "NO" response if the primary diagnosis is a physician documented type of Dementia or Alzheimer's disease.)

   Response options are: Yes, No, Unknown

Examples of "presenting evidence" for pre-screening evaluation questions #1 and 3# include:

- Mental Illness diagnosis. (Diagnostic and Statistical Manual of Mental Disorders - DSM Manual).
- Diagnosis of depression.
- Resident prescribed drug classified as psychotropic medication, regardless of reason for medication.
- Resident prescribed drug classified as hypnotic medication, regardless of reason for medication.
- The individual has a severe, chronic disability attributable to mental retardation, cerebral palsy, epilepsy, head injury, brain disease, or autism or any other condition, other than mental illness, closely related to mental retardation and requires treatment or services similar to those required for the mentally retarded. To be closely related to mental retardation, a condition must cause impairment of general intellectual functioning or adaptive behavior similar to that of mental retardation and the disability must have manifested itself before the individual reached age 22 and the disability is likely to continue indefinitely.

What qualifies as a physician documented primary diagnosis of dementia or alzheimer's disease.

- Physician documentation that states the primary reason for admission to the nursing facility or swing bed facility is dementia or alzheimer's disease. This documentation must be signed by the physician.
- The nursing facility or swing bed record clearly identifies that the resident's primary diagnosis for admission is dementia or alzheimer's disease.

What to do when the resident has dementia as a primary diagnosis and has been prescribed an antipsychotic medication.

- The prescribing of the antipsychotic would qualify as "presenting evidence" therefore you would respond "YES" to question #3 and refer to ASA.

- Any time that "presenting evidence" is present you must refer to ASA for Level I screening.

If there is any known "presenting evidence" you respond "YES" to question #3.

If there is not any known "presenting evidence" you respond "NO" to question #3.

If there is not any known "presenting evidence" and there is a physician documented primary type of dementia or alzheimer's disease you respond "NO" to question #3.

If there is "presenting evidence" and there is a physician documented primary type of dementia or alzheimer's disease you respond "YES" to question #3.

If the "presenting evidence" is unknown you respond "Unknown" to question #3.

If you respond no to all the questions on the "Screening for admissions to the Nursing Facility or Swing Bed for Mental Illness, Mental Retardation, Developmental Disabilities" no further action is required and you may proceed with admission to the nursing facility or swing bed.

Healthcare providers are required to attempt to complete an accurate medication reconciliation and history on a resident therefore a response of "Unknown" would only occur when there are unusual circumstances.

If you answer yes or unknown to any one or more of the questions on the "Screening for admissions to the Nursing Facility or Swing Bed for Mental Illness, Mental Retardation, Developmental Disabilities" you must make a referral for Level I Screening to the ASA Nurse Consultant for your facility.

You must WAIT for approval to admit to the nursing facility or swing bed.

LEVEL I SCREENING

The ASA Nurse Consultant will review the medical/clinical information the provider submits and determine if there are any exemptions, categorical determinations or positive indicators for Level II resident review.

The ASA Nurse Consultant will give the provider permission to proceed with admit to the nursing facility or swing bed when appropriate. All verbal permissions to admit will be followed with the written Level I determination.

To expedite the Level I Screening the provider can:

- Obtain hospital exemption information when appropriate. A hospital exemption includes certification from physician that an individual;

    - Is being discharged to a nursing facility directly from a hospital after receiving acute patient care at the hospital; and
    - Requires nursing facility services for the condition for which he/she received care in the hospital; and
    - The physician certifies no later than the date of discharge, that the individual requires less than 30 days of nursing facility or swing bed services.

HOSPITAL EXEMPTION

The provider has the optional choice of completing the form titled "South Dakota Hospital Exemption from Preadmission Screening Notification" for individuals who meet all three of the hospital exemption criteria.

You do not have to contact the ASA Nurse Consultant for preapproval of individuals who meet the hospital exemption criteria. You must fax the completed "South Dakota Hospital Exemption from Preadmission Screening Notification" form to the ASA office PRIOR to the date/time of admission to the swing bed or nursing facility.

The instructions and form to complete the South Dakota Hospital Exemption from Preadmission Screening Notification are in this manual. This notification must be faxed to the nursing facility or swing bed and Adult Services & Aging Nurse for the specified region PRIOR to discharge from the hospital.

The nursing facility or swing bed accepts responsibility for requesting a resident review prior to the end of the 30th day following admission from the hospital.

To request the resident review the swing bed or nursing facility must complete the PASRR pre-screening evaluation form titled "Screening for admissions to the Nursing Facility or Swing Bed for Mental Illness, Mental Retardation, Developmental Disabilities" and submit the required information to the Adult Services & Aging Nurse Consultant for their facility.

The hospital exemption notification form must be completed fully in order for the nursing facility or swing bed to accept payment for nursing facility or swing bed services. Incomplete forms will be returned.

Oversight and monitoring of this process by the State will include comparison of date/time a notification is faxed and received to the date/time of the nursing facility or swing bed admission and through on-site PASRR reviews.

To expedite the Level I Screening the provider can:

- Notify the ASA Nurse Consultant if the individual has elected and is receiving hospice services,
- Notify the ASA Nurse Consultant when the individual is ventilator dependant, comatose or has a severe physical illness that has progressed to end stage resulting in a level of impairment so severe that the individual cannot benefit from active treatment.
- Notify the ASA Nurse Consultant when an individual is age 75 or older,
- Notify the ASA Nurse Consultant when there is a physician documented primary diagnosis of dementia, including Alzheimer's disease and the individual is age 65 or older,
- Notify the ASA Nurse Consultant that an individual has been prescribed a psychotropic medication for non-mental health reasons and there is no diagnosis of mental illness.

LEVEL II RESIDENT REVIEW

The ASA Nurse Consultant will review the medical/clinical information submitted by the provider and determine if there are positive indicators for Level II resident review. Level II resident reviews are completed by the Division of Community Behavioral Health Services (DCBHS) and / or Developmental Disabilities. CMS requires Level II resident reviews to be completed within 7-9 annual average working days.

To expedite the Level II Resident Review the provider can ensure they provide the following information to Adult Services & Aging when requesting a Level I screening:

- Psychological evaluations from the community or facility,
- Demographic/face sheet,
- Medical history and physical report,
- Physician progress notes for past 3-5 days of hospitalization,
- Nursing notes for past 3-5 days that describe reason for admit to nursing facility or swing bed,
- Therapy notes for past 3-5 days including RT, PT, OT, ST
- Current medication list,
- Consultant reports that pertain to current patient status,
- Most current MDS or swing bed assessment if already in the facility.

The Divisions of Community Behavioral Health Services and/or Developmental Disabilities complete Level II resident reviews when positive indicators are identified in a Level I screening by Adult Services & Aging. The provider, resident, legal representative, discharging hospital and/or attending physician will receive a written determination notice of the resident review from DHS. The determination letter will include recommendations and/or directives regarding mental health or the developmental disability.

PROVIDER RESPONSIBILITIES REGARDING LEVEL II DETERMINATION

The provider is responsible for ensuring that the recommendations or directives for mental health or developmental disabilities are implemented. If a resident is noncompliant with DCBHS / DDD recommendations or directives the provider needs to document this and notify DHS. The provider should contact DCBHS/DDD in writing when there are issues or problems implementing recommendations or directives.

Provider documentation needs to include:

- Documentation in interdisciplinary care plan that indicates the determination by DCBHS/DDD has been care planned with the resident and interdisciplinary team.
- Documentation of the resident's involvement in care planning activities.
- Documentation which indicates the provider and resident worked together to implement the determination from DCBHS/DDD.

If a resident is noncompliant with the determination by DCBHS/DDD the provider needs to document this. Documentation needs to include;

- The reason the resident is noncompliant;
- Ongoing attempts by the provider to engage the resident in cooperatively obtaining mental health or developmental disability services as recommended by DCBHS/DDD.
- Contacts with DCBHS/DDD for recommendations.

The provider and resident both benefit when a resident cooperates with recommendations for mental health or developmental disability services through:

- A decrease in resident behaviors;
- Improved resident cooperation;
- Improved understanding of the resident and their needs; and
- Improved quality of life for the resident.

RECORD RETENTION OF PASRR DOCUMENTS

PASRR pre-admission screening evaluations, Level I documents and Level II documents should be on the resident chart (current chart, not archived). In South Dakota the following documents need to be in the active resident chart:

- Pre-screening evaluation form titled "Screening for admissions to the Nursing Facility or Swing Bed for Mental Illness, Mental Retardation, Developmental Disabilities."
- PASRR Level I screening determination.
- PASRR Level II screening determination.
- SD Hospital Exemption from Preadmission Screening Notification

PASRR and MDS 3.0

CMS and States will be monitoring PASRR activities partly through data entered into MDS 3.0 and on-site visits. The MDS 3.0 assessments will require providers to record PASRR data regarding an individual's pre-screening, Level I screening and/or Level II resident review. PASRR requirements for MDS 3.0 can be found in Chapter 2 of the RAI Manual and Section S.

PASRR, MDS and Significant Change

If a significant change in status (SCSA) occurs for an individual known or suspected to have mental illness, mental retardation, or condition related to mental retardation (as defined by 42CFR 483.102), a referral to DHS for possible Level II PASRR evaluation must occur as required by Section 1919(e)(7)(B)(iii) of the Social Security Act. Resources for determining a SCSA as it relates to PASRR can be found in the MDS 3.0 RAI Manual Chapter 2.

PASRR AND THE NURSING HOME SURVEY

MDS PASRR questions are a reminder to staff and a trigger to surveyors for PASRR tag.

Failure to document pre-screening evaluations, PASRR Level I, and if indicated all Level II requirements, (prior to admission or upon change in condition), subjects nursing facilities or swing beds to liability for:

- Survey deficiency (F285)
- Recouping federal financial participation monies (FFP) for all days prior to completion.

Specific regulatory requirements and guidance to determine a facility's compliance with PASRR are found in Appendix PP, Interpretive Guidance for Long Term Care Facilities.

Deficiencies in the areas of care planning and/or Quality of Life may occur if a provider does not follow DHS recommendations or directives provided in a Level II determination letter.

Department of Health reviews PASRR compliancy during their survey/certification of nursing homes and swing bed facilities.

Department of Social Services completes on-site PASRR compliancy reviews along with case mix reviews and as needed to determine South Dakota Medicaid Reimbursement and PASSR compliancy.

Department of Social Services will cross reference available documents, MDS assessments and eligibility information to determine if the PASRR requirements were met prior to the date/time of admission to the nursing facility or swing bed.

NURSING FACILITY AND SWING BED RESPONSIBILITIES

- Ensure the pre-admission screening evaluation form titled "Screening for Admissions to the Nursing Facility or Swing Bed for Mental Illness, Mental Retardation, Developmental Disabilities" is completed prior to admission;
- Ensure that any "yes" or "unknown" response to the "Screening for Admissions to the Nursing Facility or Swing Bed for Mental Illness, Mental Retardation, Developmental Disabilities" is referred to the ASA Nurse Consultant for Level I PASRR screening;
- Ensure you do not admit any individual referred to the ASA Nurse Consultant for Level I PASRR screening before you receive approval from Adult Services & Aging and/or the Department of Human Services; and
- Ensure that if you admit an individual with the SD Hospital Exemption from Preadmission Screening Notification form you review it for 100% accuracy.

Ensure that the following forms and related information are in the resident's active file:

- Screening for Admissions to the Nursing Facility or Swing Bed for Mental Illness, Mental Retardation, Developmental Disabilities
- PASRR Level I screening determination.
- PASRR Level II screening determination.
- SD Hospital Exemption from Preadmission Screening Notification.

DATA SUBMISSION REQUIREMENTS

Information that a provider is required to submit to Adult Services & Aging when requesting a Level I determination includes;

- Psychological Evaluation from the community/facility (if available)
- Face sheet
- Medical History and Physical Report
- Consultant reports that pertain to the current status of the patient
- Physician progress notes, past 3-5 days of hospitalization
- Current Nursing notes, past 3-5 days that would describe reason for admission to nursing facility
- Therapy notes, past 3-5 days, if applicable (RT, OT, ST)

- Current Medication list
- If already in nursing home or swing bed most current MDS or swing bed assessment

The ASA Nurse Consultant reviews the information and determines if--

- There are exemptions from PASRR Level II resident review; and

- Whether there is a substantiated diagnosis of mental illness, mental retardation or a developmental disability

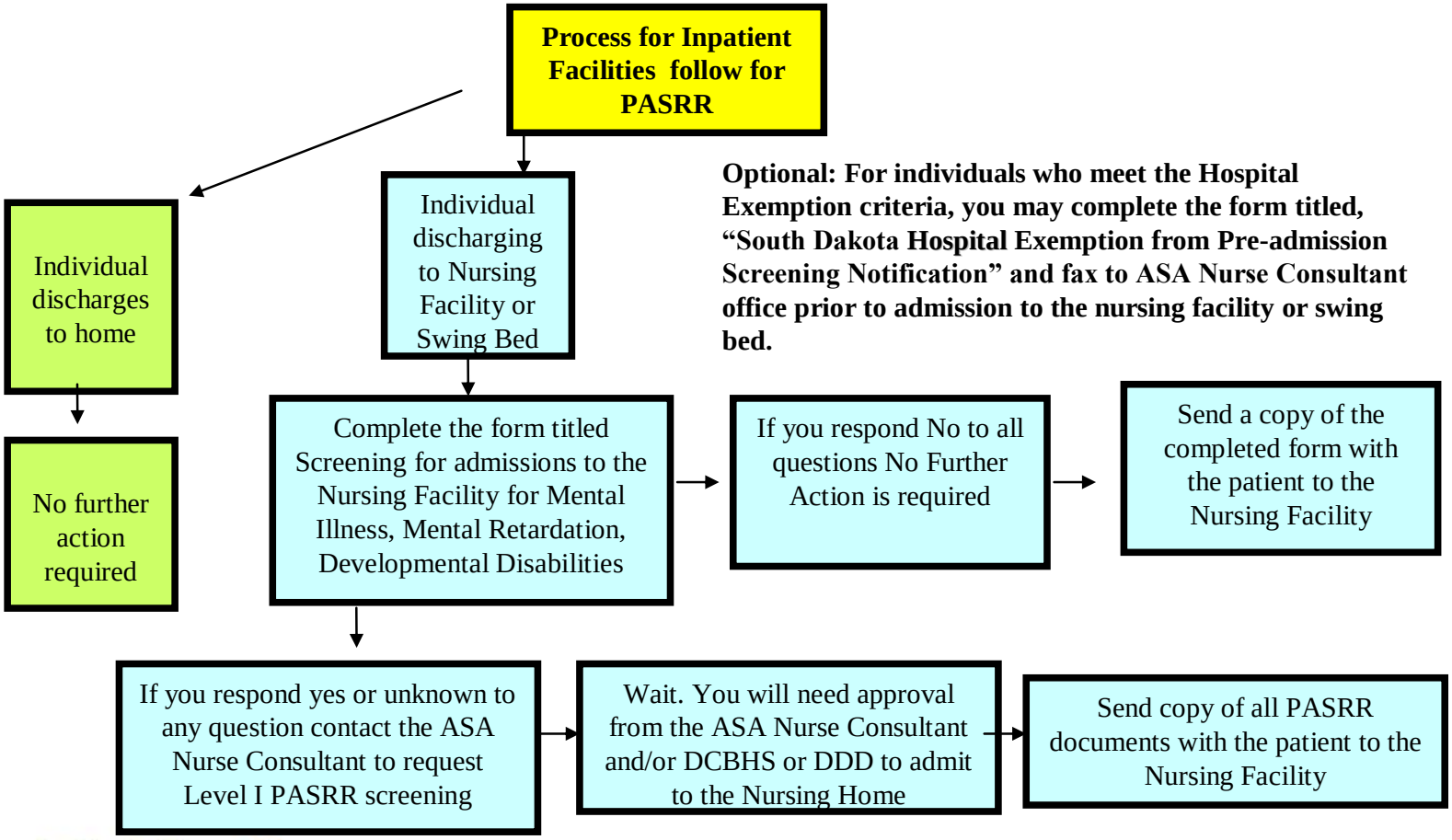
The ASA Nurse Consultant will then forward the PASRR information for a Level II resident review and determination to the appropriate Division(s) in the Department of Human Services.

- The Division of Community Behavioral Health Services (DCBHS) for people with mental illness

- The Division of Developmental Disabilities (DDD) for people with mental retardation/developmental disability

- Both Divisions will receive information from Adult Services & Aging when an individual has been identified has having a dual diagnosis (mental illness and mental retardation/developmental disabilities)

Flowchart for Inpatient Facilities to Follow



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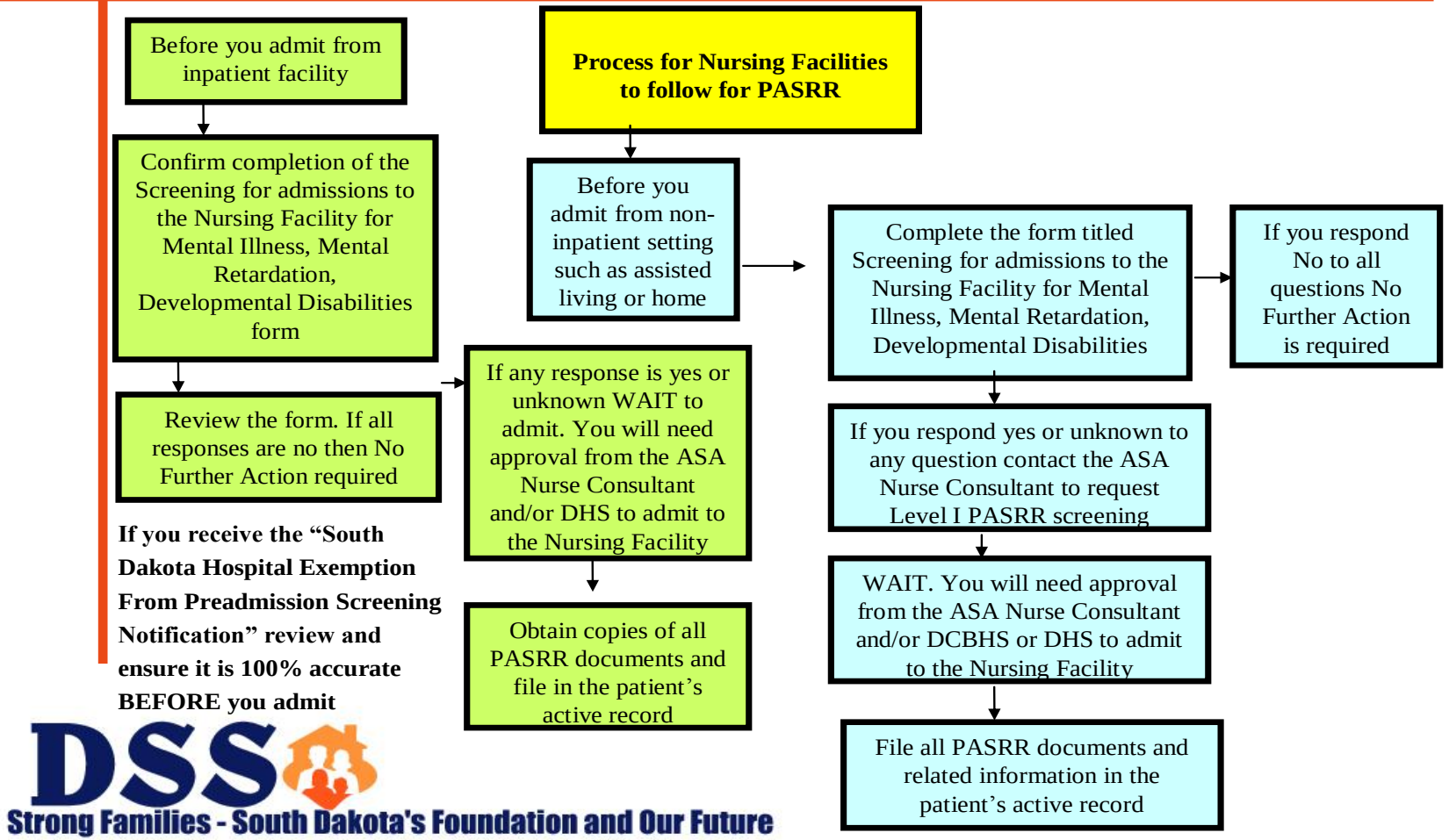
Flowchart for Nursing Facilities to Follow



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SCREENING FOR ADMISSIONS TO THE NURSING FACILITY or SWING BED FOR MENTAL ILLNESS, MENTAL RETARDATION, DEVELOPMENTAL DISABILITIES

Identification Information:

Last Name:	First Name:	MI	Date Of Birth:
Address:			Social Security Number:
City:	State:		Zip:

Primary Admitting Diagnosis with ICD code is:_____
Secondary Diagnosis with ICD code is: _____

	YES	NO	Unknown
1. Does the individual have a condition of, or is there any presenting evidence* that may indicate the individual may have mental retardation or developmental disabilities?			
2. Is the individual being referred by an agency that provides support for persons with mental retardation or other developmental disabilities and has the individual been determined to be eligible for that agency's services?			
3. Does this individual have a condition of, or is there any presenting evidence* that may indicate the individual may have mental illness? {Indicate a "NO" response if the individual being referred has a primary ADMITTING diagnosis of a physician documented type of Dementia or Alzheimer's disease AND there is NO presenting evidence.}			

- "Presenting Evidence" includes: Mental Illness diagnosis found in the Diagnostic and Statistical Manual of Mental Disorders (DSM) Manual. "Mental illness," a diagnosis regarding schizophrenia; mood, paranoid, panic, or other severe anxiety disorder; somatoform disorder; personality disorder; other psychotic disorder per the diagnostic criteria specified within DSM-IV. Resident prescribed drug(s) classified as: psychotropic, antipsychotic, antianxiety, antidepressant or hypnotic medication, regardless of reason for medication. The individual has a severe, chronic disability attributable to mental retardation, cerebral palsy, epilepsy, head injury, brain disease, or autism or any other condition, other than mental illness, closely related to mental retardation and requires treatment or services similar to those required for the mentally retarded. To be closely related to mental retardation, a condition must cause impairment of general intellectual functioning or adaptive behavior similar to that of mental retardation and the disability must have manifested itself before the individual reached age 22 and the disability is likely to continue indefinitely.

If any of the answers are "YES", or if any answer is "Unknown", contact the ASA Nurse Consultant assigned to your facility.
If all the answers are "NO", the individual may be placed without further evaluation.

____ This individual does not need to be referred for further evaluation.

____ This individual was referred to the ASA Nurse Consultant on:_____/_____.
(Complete date/time)

_____ _____
Signature of Designated Facility Representative Date Signed

South Dakota
HOSPITAL EXEMPTION
FROM PREADMISSION SCREENING NOTIFICATION

Instructions for the Hospital Discharge Staff: Use black ink and print clearly. FAX this notification to the nursing facility or swing bed and Adult Services & Aging Nurse Consultant for your Region prior to discharge from the hospital. This form must be completed fully in order for the Nursing Facility or Swing Bed to accept payment for nursing facility or swing bed services. Incomplete forms will be returned.

SECTION A: IDENTIFYING INFORMATION FOR APPLICANT/PATIENT

Last Name	First Name	MI

Living arrangement prior to the hospital admission:

[ ] group home [ ] psychiatric hospital [ ] own home/apt - alone
[ ] own home/apt – with friend or relative [ ] homeless [ ] prison
[ ] nursing facility [ ] other (please specify)

Street Address	City	State	Zip

SD County of Residence	Sex [ ] Male [ ] Female	Date of Birth (mm/dd/yyyy)

Social Security #	Medicaid Recipient [ ] yes [ ] no [ ] pending
Hospital Name	Hospital Phone #
Hospital Contact	Discharge from Psychiatric Unit to NF? [ ] yes [ ] no

SECTION B: DIAGNOSIS OF SERIOUS MENTAL ILLNESS, MENTAL RETARDATION OR RELATED CONDITION

1) If applicable, date of most recent Level II PASRR determination* _____ (mm/dd/yyyy) [ ] not applicable

* The date of the most recent Level II PASRR is only applicable for persons with diagnoses of serious mental illness, mental retardation or developmental disabilities as indicated in this section. Call Adult Services & Aging if unable to verify via local records.

2) Does the individual have a diagnosis of any of the mental illness as defined in the DSM-IV most recent version? [ ] yes [ ] no
If yes please list below.

[ ] schizophrenia
[ ] mood disorder
[ ] delusional (paranoid) disorder
[ ] panic or other severe anxiety disorder
[ ] somatoform disorder
[ ] personality disorder
[ ] other psychotic disorder
[ ] another mental disorder other than MR
If so, describe _____

3) Does the individual have a diagnosis of mental retardation(MR) (mild, moderate, severe or profound) as described in the ARSD 67:54:04:05. [ ] yes [ ] no

4) Does the individual have a severe, chronic disability that is attributable to a condition other than mental retardation, but is closely related to MR because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with MR and requires treatment or services similar to those required for persons with MR?

[ ] yes [ ] no If yes, please specify;

SECTION C: CERTIFICATION FOR HOSPITAL EXEMPTION

As the individual's physician, I certify that the individual
*is discharged to a nursing facility or swing bed directly from a hospital after receiving acute patient care at the hospital; and
*requires nursing facility services for the condition for which he/she received care in the hospital; and
*as the physician, I certify, no later than the date of discharge, that the individual requires less than 30 days of nursing facility or swing bed services.

Physician's Printed Name	
Physician's Signature	Date (mm/dd/yyyy)

Please note: The individual cannot be admitted to the nursing facility through the hospital exemption if all three criteria are not met. If the individual does not meet the three criteria for exemption, the individual may still seek nursing facility or swing bed admission through a pre-admission screen via completion of the "SCREENING FOR ADMISSIONS TO THE NURSING FACILITY OR SWING BED FOR MENTAL ILLNESS, MENTAL RETARDATION, DEVELOPMENTAL DISABILITIES" and referral to Adult Services & Aging if applicable.

SECTION D: IDENTIFYING INFORMATION FOR THE NURSING FACILITY OR SWING BED TO WHICH AN INDIVIDUAL WILL BE ADMITTED

Facility Name		Facility Contact	
Street Address	City	State	Zip
Date of Expected Admission (mm/dd/yyyy)	Phone #	Fax #	

Printed Name of Hospital Staff completing this form	Time faxed to ASA
Signature of Hospital staff completing this form	Date (mm/dd/yyyy) faxed to ASA

Circle the name of the Adult Services & Aging (ASA) Nurse Consultant to whom you faxed this notification form.

Region I – Larra Miner
FAX 605-394-1899

Region II – Lana Glanzer
FAX 605-353-7103

Region III – Cassandra Varilek
FAX 605-882-5024

Region IV – Lori Baltzer
FAX 605-668-3014

Region V – Tricia Fjerestad
FAX 605-367-4866

THIS NOTIFICATION FORM MUST BE KEPT IN THE NURSING FACILITY OR SWING BED RESIDENT'S ACTIVE FILE. BY ACCEPTING ADMISSION, THE NURSING FACILITY OR SWING BED CONFIRMS THAT THE HOSPITAL EXEMPTION CRITERIA AND ALL APPLICABLE REQUIREMENTS OF SOUTH DAKOTA'S PASRR PROGRAM ARE MET. THE NURSING FACILITY OR SWING BED ACCEPTS THE ADMISSION ONLY AFTER RECEIPT AND REVIEW OF THIS NOTIFICATION FORM FOR 100% ACCURACY AND COMPLETION. THE NURSING FACILITY OR SWING BED ACCEPTS RESPONSIBILITY FOR REQUESTING A RESIDENT REVIEW (IF REQUIRED) FROM ADULT SERVICES & AGING PRIOR TO THE 30TH DAY FOLLOWING ADMISSION FROM THE HOSPITAL.

ADULT SERVICES & AGING
LEVEL I PASRR REVIEW

Last Name, First Name, MI	Nursing Facility or Swing Bed
Social Security Number	Date of Birth

A check in any of the below boxes means Nursing Facility or Swing Bed placement appropriate and the provider may proceed with admission to the Nursing Facility or Swing Bed.

Level II review exemptions – AR 46:20:34:03 and 46:10:04:14

	The diagnosis of MR/DD or MI is unsubstantiated;
	The individual is being readmitted to a nursing home from a hospital to which they were transferred for the purpose of receiving care; (nursing facility must evaluate upon return for significant change in status and submit PASRR request if indicated)
	The individual is transferring from one nursing home to another and PASRR has previously been completed;
	The physician has identified the need for a nursing facility or swing bed stay following hospitalization which will be for less than 30 days;
	There is a diagnosis of situational depression that is of short duration and in direct relation to an occurrence in an individual's life and does not appear that it will lead to a chronic disability;
	There is use of psychotropic medication in the absence of a major mental illness diagnosis;
	There is a diagnosis of anxiety disorder that is not identified as severe and does not appear to be leading to chronic disability;
	Physician order for respite stay of 30 days or less.

Categorical Determination - AR 46:20:16:15 and 46:10:04:16

	Terminal illness diagnosis, determined by a physician or hospice involvement that includes a life expectancy of 6 months or less;
	Severe physical illness which has resulted in coma or ventilator dependence; (examples include: functioning at a brain stem level, or a diagnosis such as end stage COPD, Parkinson's disease, Huntington's, CHF, amyotrophic lateral sclerosis, which results in a level of impairment so severe that a person cannot be expected to benefit from active treatment.)
	The age of individual is 75 years or older;
	A diagnosis of dementia, including Alzheimer's disease, in a consumer at least 65 years old.

Adult Services & Aging Nurse Consultant	Date

REQUEST FOR LEVEL II CHECKLIST

DD_____MH_____ DD/MH_____

FROM: ASA Nurse Consultant: _____

Patient Name: _____

Address: _____

Date of Birth: _____

Social Security Number: _____

Next of Kin, address, and phone number (if known):

_____

_____

Nursing Facility or Swing Bed admitting to: _____

Address: _____

Phone Number: _____

Contact Person from referring facility: _____

Attached

_____ Psychological Evaluation from the community/ facility (if available)

_____ Face sheet

_____ Medical History and Physical Report

_____ Consultant reports that pertain to the current status of the patient (including neurological assessment)

_____ Physician progress notes, past 3-5 days of hospitalization

_____ Current Nursing notes, past 3-5 days that would describe reason for admission to nursing facility or swing bed (DD/MH)

_____ Therapy notes, past 3-5 days, if applicable (RT, OT, ST)

_____ Current Medication list

_____ Most current MDS or swing bed assessment if already in the facility.

Chapter 46:20:34

Preadmission Screening and Resident Review

Section

Section

46:20:34:01. Definitions. Terms used in this chapter mean:

(1) "Active treatment," the implementation of a program of specialized and generic training, treatment, health services, and related services that lead to the acquisition of the behaviors necessary for the individual to function with as much self-determination and independence as possible and to prevent regression or loss of current optimal functional status;

2) "Dementia," disorders characterized by the development of multiple cognitive deficits, including memory impairment, that are due to the direct physiological effects of a general medical condition, to the persisting effects of a substance, or to multiple etiologies such as the combined effects of cerebrovascular disease and Alzheimer's disease;

(3) "Nursing facility," as defined in subdivision 67:45:01:01(10);

(4) "Preadmission screening and resident review" or "PASRR," a process made up of a Level I screening completed by the Department of Social Services and Level II review completed by the division to determine eligibility when an individual with a mental illness as defined in subdivision 46:20:18:01(19), applies to reside in a Medicaid certified swing bed or nursing facility;

(5) "Specialized mental health services," psychiatric services resulting in the continuous and aggressive implementation of an individualized plan of care that is developed by an interdisciplinary team which includes a physician, QMHP, and other professionals which prescribes specific therapies and activities for the treatment of individual's experiencing an acute episode of SMI requiring supervision by trained mental health professionals to obtain improvement in function that would permit a reduction in the level of intensity to below the level of specialized services at the earliest possible time;

(6) "Swing bed," as defined in subdivision 67:45:01:01(13).

Source: 37 SDR 131, effective January 10, 2011.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26(4).

46:20:34:02. Level I screening. The Department of Social Services shall conduct a Level I screening that identifies each individual who is seeking Medicaid certified swing bed or nursing facility services who may have a mental illness.

Source: 37 SDR 131, effective January 10, 2011.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26(4).

46:20:34:03. Level II review exemptions. An individual is exempt from a Level II review if at least one of the following occurs:

(1) The diagnosis of mental illness is unsubstantiated;

(2) The individual is readmitted to a Medicaid certified swing bed or nursing facility from a hospital to which the individual was transferred for the purpose of receiving care;

(3) The individual is transferred from one Medicaid certified swing bed or nursing facility to another and a PASRR has previously been completed;

(4) The physician identifies the need for rehabilitation following hospitalization for a duration of less than 30 days;

(5) The physician orders a respite stay of 30 days or less;

(6) The individual has a diagnosis of situational depression that is of short duration and in direct relation to an occurrence in an individual's life and does not appear to be a chronic disability;

(7) The individual is using psychotropic medication in the absence of a major mental illness diagnosis; or

(8) The individual has a diagnosis of an anxiety disorder that is not identified as severe and does not appear to be leading to a chronic disability.

The Department of Social Services shall complete a Level I screening form to notify appropriate parties of the determination of the exemption.

Source: 37 SDR 131, effective January 10, 2011.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26(4).

46:20:34:04. Exempt hospital discharge. An individual is exempt from a PASRR following a hospital discharge if the following conditions are met:

(1) The individual is admitted to a Medicaid certified swing bed or nursing facility directly from a hospital after receiving acute inpatient care at the hospital;

(2) The individual requires Medicaid certified swing bed or nursing facility services for the condition that care was received in the hospital; and

(3) The individual's attending physician has certified before admission to the Medicaid certified swing bed or nursing facility that the individual is likely to require less than 30 calendar days of Medicaid certified swing bed or nursing facility services.

If an individual enters a Medicaid certified swing bed or nursing facility as an exempt hospital discharge and is later found to require more than 30 days of nursing care, the facility shall request a PASRR prior to the expiration of that 30 days.

Source: 37 SDR 131, effective January 10, 2011.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26(4).

46:20:34:05. Categorical determinations for Level I. The Department of Social Services shall make a categorical determination in one of the following situations:

(1) A terminal illness diagnosis, determined by a physician or hospice involvement that includes a life expectancy of 6 months or less;

(2) A severe physical illness that has resulted in coma or ventilator dependence;

(3) The age of an individual is 75 years or older; or

(4) A diagnosis of dementia, including Alzheimer's disease, in a client at least 65 years old.

For any of these situations, the Department of Social Services shall complete a Level I screening form. A copy of the form shall be sent to the division and any appropriate facility. A categorical determination may warrant Medicaid certified swing bed or nursing facility services but does not warrant mental health services or specialized services.

Source: 37 SDR 131, effective January 10, 2011.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26(4).

46:20:34:06. Level II review. The division shall conduct a Level II review that consists of determining the appropriateness of a Medicaid certified swing bed or nursing facility and possible mental health services, including specialized mental health services, for individuals identified in the Level I screening.

Each individual is reviewed for appropriateness of placement, regardless of the source of payment for the swing bed or nursing facility services. A determination whether or not an individual requires the level of services provided by the facility and whether or not an individual can benefit from mental health services is made.

Source: 37 SDR 131, effective January 10, 2011.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26(4).

46:20:34:07. Level II determination -- Data requirements. The data used for a Level II determination includes:

(1) A comprehensive social and developmental history and physical, including:

(a) Medical history;

(b) Review of body systems;

(c) Evaluation of the individual's neurological system in the areas of motor functioning, sensory functioning, gait, deep tendon reflexes, cranial nerves, and abnormal reflexes; and

(d) In case of abnormal findings which are the basis for a nursing facility placement, additional evaluations conducted by appropriate specialists;

(2) A comprehensive medication history including current or immediate past use of medications that could mask symptoms or mimic mental illness;

(3) A psychosocial evaluation of the individual, including current living arrangements and medical and support systems;

(4) A comprehensive psychiatric or psychological evaluation including a complete psychiatric and development history; evaluation of intellectual functioning, memory functioning, and orientation; description of current attitudes and overt behaviors; affect, suicidal, or homicidal ideation, paranoia, and degree of reality testing (presence and content of delusions) and hallucinations; and

(5) A functional assessment of the individual's ability to engage in activities of daily living and the level of support that would be needed to assist the individual to perform these activities. This assessment must conclude whether this level of support can be provided to the individual in an alternative community setting or if a nursing facility placement is warranted.

Source: 37 SDR 131, effective January 10, 2011.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26(4).

46:20:34:08. Determination of services. The division shall determine if the individual requires the level of services provided by a Medicaid certified swing bed or nursing facility due to the individual's physical or mental condition. If the division determines that an individual requires a Medicaid certified swing bed or nursing facility services, the facility may admit or retain the individual. If the division determines that an individual does not require Medicaid certified swing bed or nursing facility services, the individual may not be admitted.

Source: 37 SDR 131, effective January 10, 2011.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26(4).

46:20:34:09. Determination of specialized mental health services. If the division determines that the individual requires Medicaid certified swing bed or nursing facility services, the division shall also determine whether the individual may benefit from mental health services.

If the division determines that an individual requires both Medicaid certified swing bed or nursing facility services and specialized mental health services as defined in subdivision 46:20:34:01(5), the facility may admit

or retain the individual and the state shall provide or arrange for the provision of the specialized mental health services.

Source: 37 SDR 131, effective January 10, 2011.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26(4).

46:20:34:10. Timeliness of determinations of Level II review. The division shall make each Level II determination within an annual average of seven to nine business days of receipt of the Level I screening and all of the data required in § 46:20:34:07.

Source: 37 SDR 131, effective January 10, 2011.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26(4).

46:20:34:11. Notification of Level II determination. The division shall issue a written notification of the Level II review determination. The notification shall include:

(1) The name of each professional who performed an evaluation used to make the Level II determination;

(2) The date each portion of the evaluation was administered; and

(3) Any other information used to make the Level II determination.

A copy of this notification shall be sent to the individual on whom the Level II review was completed, the individual's legal representative if applicable, the Medicaid certified swing bed or nursing facility, and any other party affected by the Level II determination.

Source: 37 SDR 131, effective January 10, 2011.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26(4).

46:20:34:12. Determination may not be countermanded. A Level II determination made by the division may not be countermanded by the Department of Social Services.

Source: 37 SDR 131, effective January 10, 2011.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26(4).

46:20:34:13. Appeal of ineligibility of Level II determination. The individual, or the individual's legal representative, may appeal within 30 calendar days of receipt of the notice of ineligibility pursuant to SDCL chapter 1-26 by notifying the Department of Human Services in writing. Upon request, the individual, or the individual's legal representative, will be provided with information in an accessible format. Any costs associated with legal counsel obtained to represent the individual are not the responsibility of the Department of Human Services.

Source: 37 SDR 131, effective January 10, 2011.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26(4).

46:20:34:14. Length of stay. For the purposes of establishing length of stay in a Medicaid certified swing bed or nursing facility, the 30 months of continuous residence in a Medicaid certified facility may include temporary absences for hospitalization or therapeutic leave and may include consecutive residences in more than one Medicaid certified swing bed or nursing facility.

Source: 37 SDR 131, effective January 10, 2011.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26(4).

46:20:34:15. Individuals not requiring swing bed or nursing facility services but requiring mental health services -- 30 month determination. If the individual is determined not eligible for swing bed or nursing home services, but requires mental health services, the Department of Social Services and Department of Human Services, in consultation with the individual's family or legal representative and caregivers, shall:

(1) If the individual has continuously resided in a Medicaid certified swing bed or nursing facility at least 30 months prior to a determination of eligibility being made;

(a) Offer the choice of remaining in the facility or receiving services in an alternative setting;

(b) Inform the individual of the institutional and noninstitutional alternatives covered under the state Medicaid plan;

c) Clarify the effect on the individual's eligibility for Medicaid services under the state plan if the individual chooses to leave the Medicaid certified swing bed or nursing facility, including the effect on readmission to the Medicaid certified swing bed or nursing facility; and

(d) Provide, or arrange the provision of, mental health services for the mental illness; or

(2) If the individual has been residing in the Medicaid certified swing bed or nursing facility less than 30 months prior to a determination of eligibility being made;

(a) Arrange for the safe and orderly discharge of the individual from the facility;

(b) Prepare and orient the individual for discharge; and

(c) Provide, or arrange for the provision of, mental health services for the mental illness.

Source: 37 SDR 131, effective January 10, 2011.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26(4).

46:20:34:16. Significant change. A significant change is a decline or improvement in an individual's status that:

(1) Will not normally resolve itself without intervention by staff or by implementing standard disease-related clinical interventions, is not "self-limiting" (for decline only);

(2) Impacts more than one area of the individual's health status; and

(3) Requires interdisciplinary review or revision of the care plan.

If a significant change occurs for an individual known or suspected to have a mental illness, the Medicaid certified swing bed or nursing facility shall make a referral to the division for a possible Level II review. This referral shall occur within 14 days of the identification of the significant change.

Source: 37 SDR 131, effective January 10, 2011.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26(4).

46:20:34:17. New admission and readmission. A new admission occurs when an individual is admitted to a Medicaid certified swing bed or nursing facility for the first time or when an admission does not qualify as a readmission. With the exception of certain exempt hospital discharges listed in § 46:20:34:04, new admissions are subject to a PASRR.

A readmission occurs when an individual is readmitted to a Medicaid certified swing bed or nursing facility from a hospital to which the individual was transferred from a facility for the purpose of receiving medical care. This type of readmission does not require a PASRR.

Source: 37 SDR 131, effective January 10, 2011.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26(4).

46:20:34:18. Interfacility transfers. An interfacility transfer occurs when the individual is transferred from one Medicaid certified swing bed or nursing facility to another, with or without an intervening hospital stay. Interfacility transfers are not subject to a PASRR. If an individual transfers from a Medicaid certified swing bed or nursing facility to a hospital or to another Medicaid certified swing bed or nursing facility, the transferring facility is responsible for ensuring that copies of the individual's PASRR findings accompany the individual.

Source: 37 SDR 131, effective January 10, 2011.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26(4).

46:20:34:19. Out of state placement. The state where the individual is a state resident or would be a state resident at the time Medicaid eligibility is obtained shall make the required PASRR determination.

Source: 37 SDR 131, effective January 10, 2011.

General Authority: SDCL 1-36A-1.26(4).

Law Implemented: SDCL 1-36A-1.26(4).

Chapter 46:10:04

Preadmission Screening and Resident Review

Section

46:10:04:02. Level I screening. The DSS shall conduct a Level I screening that consists of identifying each individual who is seeking nursing facility services who may have mental retardation or a developmental disability.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:03. Level II review. The DHS shall conduct a Level II review that consists of determining appropriateness of nursing facility services and specialized services for individuals identified in the Level I screening. The Level I screening and the Level II review make up the PASRR or preadmission screening resident review which is the process that is completed when all individuals with mental retardation or developmental disability apply to reside in nursing facilities. Each individual is reviewed for appropriateness of placement, regardless of the source of payment for the nursing facility services. A determination whether or not an individual requires the level of services provided by a nursing facility and whether or not an individual can benefit from specialized services is made. These determinations must be made by the director.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:04. Director. The director of the Division of Developmental Disabilities is the state mental retardation and developmental disability authority. The director is responsible for both the evaluation and determination functions for individuals with mental retardation or developmental disability.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:04. Director. The director of the Division of Developmental Disabilities is the state mental retardation and developmental disability authority. The director is responsible for both the evaluation and determination functions for individuals with mental retardation or developmental disability.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:05. Timeliness of reviews. The director shall make each PASRR Level II determination within seven to nine business days of receipt of the Level I screening and all the information required in § 46:10:04:11.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:06. Determination of services. The director shall determine whether, because of the individual's physical and mental condition, the individual requires the level of services provided by a nursing facility. If the director determines that an individual requires nursing facility services, the nursing facility may admit or retain the individual. If the director determines that an individual does not require nursing facility services, the individual cannot be admitted. Nursing facility services are not a covered Medicaid service for that individual and further screening is not required.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:07. Determination of specialized services. If the director determines that the individual requires nursing facility services, the director shall also determine whether the individual may benefit from specialized services. If the director determines that an individual requires both nursing facility services and specialized services, the nursing facility may admit or retain the individual and the state shall provide or arrange for the provision of the specialized services needed by the individual in the nursing facility. If the director determines that the individual does not require nursing facility services and may benefit from specialized services, the director shall provide the individual with information regarding service options.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:08. Individuals not requiring nursing facility services but requiring specialized services. For any individual who has continuously resided in a nursing facility at least 30 months before the date of the determination and who requires only specialized services, the state shall, in consultation with the individual's family or legal representative and caregivers:

(1) Offer the individual the choice of remaining in the nursing facility or of receiving services in an alternative setting;

(2) Inform the individual of the institutional and non-institutional alternatives covered under the state Medicaid plan;

(3) Clarify the effect on the individual's eligibility for Medicaid services under the state plan if the individual chooses to leave the nursing facility, including the effect on readmission to the nursing facility; and

(4) Regardless of the individual's choice, provide for, or arrange for the provision of, specialized services for the mental retardation or developmental disability.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:09. Specialized services. For any individual who requires only specialized services and who has not continuously resided in a nursing facility at least 30 months before the date of the determination, the state shall, in consultation with the individual's family or legal representative and caregivers:

(1) Arrange for the safe and orderly discharge of the individual from the facility;

(2) Prepare and orient the individual for discharge; and

(3) Provide for, or arrange for the provision of, specialized services for the mental retardation or developmental disability.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:10. Length of stay. For the purpose of establishing length of stay in a nursing facility, the 30 months of continuous residence in a nursing facility may include temporary absences for hospitalization or therapeutic leave and may consist of consecutive residences in more than one nursing facility.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:11. Data requirements. For determining if nursing facility services and specialized services are required, at a minimum, the data used must include:

(1) A comprehensive social and developmental history and physical, including:

(a) Medical history;

(b) Review of body systems;

(c) Evaluation of the individual's neurological system in the areas of motor functioning, sensory functioning, gait, deep tendon reflexes, cranial nerves, and abnormal reflexes; and

(d) In case of abnormal findings which are the basis for a nursing facility placement, additional evaluations conducted by appropriate specialists;

(2) A comprehensive medication history including current or immediate past use of medications that could mask symptoms or mimic mental illness;

(3) A psychosocial evaluation of the individual, including current living arrangements and medical and support systems;

(4) A comprehensive psychiatric or psychological evaluation including a complete psychiatric and developmental history; evaluation of intellectual functioning, memory functioning, and orientation; description of current attitudes and overt behaviors; affect, suicidal or homicidal ideation, paranoia, and degree of reality testing (presence and content of delusions) and hallucinations;

(5) A functional assessment of the individual's ability to engage in activities of daily living and the level of support that would be needed to assist the individual to perform these activities. This assessment must conclude whether this level of support can be provided to the individual in an alternative community setting or if a nursing facility placement is warranted.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:12. Determination cannot be countermanded. A PASRR determination made by the director may not be countermanded by the DSS. The director shall issue a written letter for any determination of a Level II review. The letter shall include the name of each professional who performed an evaluation used to make the determination, the date on which each portion of the evaluation was administered, and any other information used to make the determination. A copy of this letter shall be sent to the individual, family, guardian, nursing facility, or any other party affected by the determination. The individual may appeal this determination within 30 calendar days of receipt of the letter according to SDCL chapter 1-26. The individual must make a written request to the DSS. Upon request the individual will be provided with information in an accessible format. Any costs associated with legal counsel obtained by the individual are not the responsibility of the DHS or DSS.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:13. Residency. The director of the state where the individual is a state resident or would be a state resident at the time Medicaid eligibility is obtained shall make the required PASRR determination.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:14. Level II exemptions. An individual is exempt from a PASRR Level II review if at least one of the following occurs:

(1) The diagnosis of mental retardation or developmental disability is unsubstantiated;

(2) An individual is readmitted to a nursing facility from a hospital to which the individual was transferred for the purpose of receiving care;

(3) An individual is transferred from one nursing facility to another and a PASRR has previously been completed;

(4) The physician identifies the need for rehabilitation following hospitalization for a duration of less than 30 days;

(5) The individual has a diagnosis of situational depression that is of short duration and in direct relation to an occurrence in an individual's life and does not appear to be a chronic disability;

(6) The individual is admitted to a swing bed.

The DSS shall complete a PASRR 5 form to notify appropriate parties of the determination of the exemption.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:15. Exempt hospital discharge. An individual is exempt from a PASRR following a hospital discharge if the following conditions are met:

(1) The individual is admitted to a nursing facility directly from a hospital after receiving acute inpatient care at the hospital;

(2) The individual requires nursing facility services for the condition that care was received in the hospital; and

(3) The individual's attending physician has certified before admission to the nursing facility that the individual is likely to require less than 30 calendar days of nursing facility services.

If an individual enters a nursing facility as an exempt hospital discharge and is later found to require more than 30 days of nursing care, the director shall conduct a continued stay review within 40 calendar days of admission.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:16. Categorical determinations. The following situations, known as categorical determinations, approved by the director, warrant nursing facility services but do not warrant specialized services:

(1) A terminal illness diagnosis, determined by a physician or hospice involvement that includes a life expectancy of six months or less;

(2) A severe physical illness which has resulted in a coma or ventilator dependence;

(3) A diagnosis of dementia, including Alzheimer's disease, in an individual at least 65 years old;

(4) The age of an individual is 75 years or older.

For any of these situations, the DSS shall complete a PASRR 5 form. A copy of the form shall be sent to the DHS and the appropriate nursing facility.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

46:10:04:17. Inter-facility transfers. An inter-facility transfer occurs when the individual is transferred from one nursing facility to another, with or without an intervening hospital stay. Inter-facility transfers are not subject to a preadmission screening. If an individual transfers from a nursing facility to a hospital or to another nursing facility, the transferring nursing facility is responsible for ensuring that copies of the individual's preadmission screening review findings accompany the individual.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26

46:10:04:18. New admission and readmission. A new admission occurs when an individual is admitted to any nursing facility for the first time or does not qualify as a readmission. With the exception of certain hospital discharges described in § 46:10:04:15, new admissions are subject to a preadmission screening. A readmission occurs when an individual is admitted for the second time to any nursing facility from a hospital. A readmission is not subject to a preadmission screening.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

TAG #	REGULATION	GUIDANCE TO SURVEYORS
F285	(m) Preadmission screening for mentally ill individuals and individuals with mental retardation (1) A nursing facility must not admit, on or after January 1, 1989, any new resident with— (i) Mental Illness as defined in paragraph (m)(2)(i) of this section, unless the State mental health authority has determined, based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority, prior to admission; (A) That, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility; and (B) If the individual requires such level of services, whether the individual requires specialized services for mental retardation. (ii) Mental retardation, as defined in paragraph (m)(2)(ii) of this section, unless the State mental retardation or developmental disability authority has determined prior to admission— (A) That, because of the physical and mental conditions of the individual, the individual requires the level of service provided by a nursing facility; and (B) If the individual requires such level of services, whether the individual requires specialized services for mental retardation. (2) Definitions. For purpose of this section— (i) An individual is considered to have "mental illness" if the individual has a serious mental illness defined at 483.102(b)(1). (ii) An individual is considered to be "mentally retarded" if the individual is mentally retarded as defined in 483.102 (b)(3) or is a person with a related condition as described in 42 CRF 1009.	<u>483.20(n) Intent:</u> To ensure that persons with mental illness and mental retardation receive the care and services they need in the most appropriate setting. "Specialized services" are those services that the State is required to provide or arrange for that raise the intensity of services to the level needed by the resident. That is, specialized services are an "add-on" to NF services—they are of a higher intensity and frequency than specialized rehabilitation services, which are provided by the NF. The statute mandates preadmission screening for all individuals with mental illness (MI) or mental retardation (MR) who apply to NFs, regardless of the applicant's source of payment, except as provided below. (See 1919(b)(3)(f).) Residents readmitted and individuals who initially apply to a nursing facility directly following a discharge from an acute care stay exempt if: • They are certified by a physician prior to admission to require a nursing facility stay of less than 30 days; and • They require care at the nursing facility for the same condition for which they were hospitalized. The State is responsible for providing specialized services to resident with MI/MR residing in Medicaid-certified facilities. The facility is required to provide all other care and services appropriate to the resident's condition. Therefore, if a facility has residents with MI/MR, do not survey for specialized services, but survey for all other requirements, including resident rights, quality of life, and quality of care. If the resident's PAS report indicates that he or she needs specialized services but the resident is not receiving them , notify the Medicaid agency. NF services ordinarily are not the intensity to meet the need s of the residents with MI and MR. <u>483.20(m) Probes:</u>

		If sampled residents have MI or MR, did the State Mental Health or Mental Retardation Authority determine: • Whether the residents needed the services of the NF? • Whether the residents need specialized services for their MI or MR?[1]

FREQUENTLY ASKED PASRR QUESTIONS AND ANSWERS

Question 1. What is the goal of the federally mandated PASRR?

The goal of PASRR is to:

- Assist nursing and swing bed facilities in providing the necessary care and services to each resident so that they may attain or maintain the highest practicable physical, mental, and psychosocial well-being (42 CFR 483.25, F285); and
- Prevent inappropriate institutionalization of individuals with Mental Illness (MI), Mental Retardation (MR), or Developmental Disabilities (DD).

Question 2. Can you briefly describe the PASRR Process?

The form titled *Screening for Admissions to the Nursing Facility or Swing Bed for Mental Illness, Mental Retardation, Developmental Disabilities* identifies individuals who have indicators of Mental Illness, Mental Retardation or Developmental Disabilities. Only a designated facility representative should complete, sign and date this form. The designated facility representative is an employee of the facility who has the responsibility of completing these forms.

If there are any yes responses, or if the response is unknown, you will need to contact the Adult Service & Aging (ASA) Nurse Consultant assigned to your region and request a PASRR Level I.

- PASRR Level I – The ASA Nurse Consultant will complete a PASRR Level I screening and determine if there are positive indicators to refer for a PASRR Level II screening.
    - Only when a Level I PASRR screening is positive for indicators is the individual referred for a PASRR Level II screening.
- PASRR Level II – Evaluates the individual for the most appropriate and least restrictive care setting (Examples include home and community based services, ICF/MR, Nursing Facility, In-patient psychiatric hospital).
    - PASRR Level II recommends specialized services for individuals who have serious MI, MR, or DD and services of lesser intensity for other individuals who may benefit from such services.

Question 3. Who does PASRR apply to?

All individuals being admitted into a Medicaid Certified Nursing Facility or Swing Bed <u>without exception</u> must undergo a screening for Mental Illness, Mental Retardation, or Developmental Disabilities prior to admission to a nursing facility. PASRR applies to the individuals listed below:

- Individuals who are private pay;
- Individuals whose stay will be paid by insurance;
- Individuals whose stay will be paid by Medicare;
- Individuals whose stay will be paid by Medicaid.

Federal regulation prohibits Medicaid reimbursement to nursing facilities or swing bed under certain circumstances, such as, but not limited to, when the nursing facility or swing bed fails to obtain a Level I determination when there are indicators of MI, MR, or DD.

Question 4. If I am an inpatient provider, how do I know whether I should complete PASRR?

PASRR screenings should not routinely be requested for all individuals. PASRR should only be requested for individuals whom providers are actively arranging to discharge to a nursing facility or swing bed. Results of the PASRR screening should be forwarded along with the patient's medical records to the receiving nursing facility or swing bed. A PASRR is not required when a patient is being discharged home.

Question 5. At what time is PASRR done?

A PASRR must be done in the following situations:

- Prior to a person being admitted to a nursing facility or swing bed;
- Prior to expiration of a time-limited screening. (Example of a time-limited screening would be when the Department of Human Services (DHS) has given authorization for a 30, 60 or 90 day nursing facility stay);
- For admissions from out-of-state, the PASRR from the previous state will be accepted upon admission. A South Dakota Screening for admissions to the Nursing Facility or Swing Bed for Mental Illness, Mental Retardation, Developmental Disabilities must be completed upon admit. A Level I PASRR screening must be requested within one business day of admission; or
- When a resident of a nursing facility has a Significant Change in Status as defined in the federal Resident Assessment Instrument (RAI) Manual. (42 CFR 483.20).

Question 6. What is a Significant Change in Status Assessment (SCSA)?

Providers are responsible for following the guidelines listed in the Long Term Care Facility RAI for determining when a significant change in status should be completed.

Question 7. What is the relationship between PASRR and SCSA MDS?

Providers are responsible for following the guidelines listed in the Long Term Care Facility Resident Assessment Instrument (RAI) for determining when a significant change should result in referral for a preadmission screening (PAS) and resident review (RR) Level II Evaluation as defined in the RAI Manual.

Question 8. What are some examples of Significant Change in Status that Relate to PASRR?

Please refer to the examples provided in the RAI manual.

Question 9. How do I request a PASRR Level I screening?

For individuals who are planning to admit to a Nursing Facility or Swing Bed and "yes" or "unknown" is the response to any of the questions on the form titled *Screening for Admissions to the Nursing Facility or Swing Bed for Mental Illness, Mental Retardation, Developmental Disabilities* you will need to contact the Adults Services & Aging Nurse Consultant in your region to request a PASRR Level I screening.

- **Region 1** – Counties of: Bennett, Butte, Campbell, Corson, Custer, Dewey, Fall River, Haakon, Harding, Jackson, Jones, Lawrence, Lyman, Meade, Mellette, Pennington, Perkins, Potter, Shannon, Stanley, Sully, Todd, Tripp.

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- **Region 2** – Counties of: Aurora, Beadle, Brookings, Brule, Buffalo, Clark, Davison, Faulk, Hand, Hanson, Hughes, Hyde, Jerauld, Kingsbury.

  Lana Glanzer, RN
  110 3rd St S W, Suite 200
  Huron, SD 57350
  PH. 605-353-7100 ext 208
  FAX: 605-353-7103

- **Region 3** – Counties of: Brown, Codington, Day, Deuel, Edmunds, Grant, Hamlin, McPherson, Marshall, Roberts.

Cassandra Varilek RN
2001 9th Ave SW Ste 300
Watertown, SD 57201
PH 605-882-5003
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- **Region 4** – Counties of: Bon Homme, Charles Mix, Clay, Douglas, Gregory, Hutchinson, Turner, Union, Yankton.

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- **Region 5** – Counties of: Lake, Lincoln, McCook, Miner, Minnehaha, Moody

  Tricia Fjerestad, RN
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  57103-1650
  PH. 605-367-5444 ext 421
  FAX: 605-367-4272

Question 10. What do I do after I request a Level I PASRR screening?

Wait for approval from the ASA Nurse Consultant and/or DHS before admission.

Remember that if you admit an individual who has positive indicators for PASRR without completing the PASRR process, your reimbursement from SD Medicaid will be affected.

Question 11. What are the responsibilities of a nursing facility or swing bed in regards to PASRR compliance?

A nursing facility or swing bed is responsible to:

- Ensure the form titled *Screening for Admissions to the Nursing Facility or Swing Bed for Mental Illness, Mental Retardation, Developmental Disabilities* is completed prior to admission;
- Ensure that any "yes" or "unknown" response to the *Screening for Admissions to the Nursing Facility or Swing Bed for Mental Illness, Mental Retardation, Developmental Disabilities* is referred to the ASA Nurse Consultant for Level I PASRR screening;
- Ensure you do not admit any individual referred to the ASA Nurse Consultant for Level I PASRR screening before you receive approval from Adult Services & Aging and/or the Department of Human Services;
- Ensure that the following forms and related information are placed in and remain in the resident's active file:
  - Screening for Admissions to the Nursing Facility or Swing Bed for Mental Illness, Mental Retardation, Developmental Disabilities
  - PASRR Level I screening determination
  - PASRR Level II screening determination.
- Department of Social Services will check Nursing Facility records for the above forms during case mix reviews and as needed to determine South Dakota Medicaid Reimbursement.
- Ensure you carry out any directives designated by DHS in the Level II resident review determination letter.

Question 12. Does PASRR apply to critical access hospital(s)?

The central issue for the critical access hospitals is whether the swing beds are Medicaid-certified. If they are, the hospitals *must* comply with PASRR. Otherwise the state cannot receive federal financial participation monies for services

provided to occupants of those beds. Section 1913 of the Social Security Act defines swing beds and clearly requires that swing-bed facilities comply with all requirements of section 1919(b) through 1919(d) with respect to the NF services offered. That includes 1919(b)(3)(F), which restates the essential PASRR requirements from 1919(e) in relation to the Resident Assessment Instrument (RAI). Section 1919(e)(7) of the Social Security Act and Chapter 42 of the Code of Federal Regulations, Sections 483.100 through 483.138 specify the requirements for pre-admission screening resident reviews for individuals with mental illness, mental retardation and developmental disabilities. Federal regulations require that PASRR screenings take place prior to admission to the swing bed.

Question 13: Does PASRR need to be re-done when an individual is transferred from a swing bed to a nursing facility?

As for whether PASRR must be re-done when an individual is transferred from a swing bed to NF: The short answer is no. Here's the longer answer: A second Level II is *not* required when an individual is transferred from one NF to another (with or without an intervening hospital stay). However, the swing bed facility must deliver the individual's records to the accepting NF (much easier in states that use web-based systems than in states that rely on paper documents). Here's the relevant portion of the CFR, at 42 CFR 483(b)(4) -- keeping in mind that swing beds are equivalent to NFs for these purposes: (4) Interfacility transfers —(i) An interfacility transfer occurs when an individual is transferred from one NF to another NF, with or without an intervening hospital stay. (ii) In cases of transfer of a resident with MI or MR from a NF to a hospital or to another NF, the transferring NF is responsible for ensuring that copies of the resident's most recent PASARR and resident assessment reports accompany the transferring resident.

If you need assistance or have questions regarding the Hospital Exemption or PASRR process please contact the ASA Nurse Consultant assigned to your Region or the Adult Services & Aging Program Manager, Nurse Consultant.

PASRR CONTACT LIST

Department of Social Services
Adult Services & Aging
Nurse Consultants
PASRR Level I Contacts

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Program Manager, Nurse Consultant
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Division of Community Behavioral Health Services
PASRR Level II Contacts

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Program Specialist
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Division of Developmental Disabilities
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A Roadmap of South Dakota's Revised Mental Health Code:

The Involuntary Commitment and Voluntary Hospitalization of Adults.

Written by Dennis Cichon

Revised and updated 2007, by the Division of Mental Health, upon permission by Dennis Cichon

Introduction

Federal law required that each state develop and implement a plan for the delivery of a comprehensive array of treatment and other services to individuals with mental illness. A qualifying state plan must meet certain requirements including provisions for the establishment of an organized, community-based system of care for the mentally ill and services designed to reduce the rate of hospitalization.

I. INVOLUNTARY COMMITMENT OF ADULTS

All commitments must be made under the emergency commitment procedures governed by SDCL 27A-10.

1. Who is subject to commitment? The Substantive Criteria

A person is subject to involuntary commitment if:

a. The person has a severe mental illness;
b. Due to the severe mental illness, the person is a danger to self or others; and
c. The individual needs and is likely to benefit from treatment.

"Severe Mental Illness" is defined as: A substantial organic or psychiatric disorder of thought, mood, perception, orientation or memory which significantly impairs judgement, behavior or ability to cope with the basic demands of life. Mental retardation, epilepsy, other developmental disabilities, alcohol or substance abuse, or brief periods of intoxication, or criminal behavior do not, alone, constitute severe mental illness. **(27A-1-1 (17))**

"Danger to Self" is defined as:

a. behavior due to severe mental illness which supports a reasonable expectation that the person will inflict serious physical injury upon himself in the near future. Such behavior shall be evidenced by the person's treatment history and the person's recent acts or omissions which constitute a danger of suicide or self-inflicted serious physical injury. Such acts may include a serious physical injury. Such acts may include a recently expressed threat if the threat is such that, if considered in the light of its context or in light of the person's previous acts or omissions, it is substantially supportive of an expectation that the threat will be carried out; or

b. a reasonable expectation of danger of serious personal harm in the near future, due to a severe mental illness, as evidenced by the person's treatment history and the person's recent acts or omissions which

demonstrate an inability to provide for some basic human needs such as food, clothing, shelter, essential medical care, or personal safety, or by arrests for criminal behavior which occur as a result of the worsening of the person's severe mental illness. **(27A-1-1 (5))**

"Danger to Others" is defined as Behavior due to severe mental illness which supports a reasonable expectation that the person will inflict serious physical injury upon another person in the near future. Such behavior shall be evidenced by the person's treatment history and the person's recent acts or omissions which constitute a danger of serious physical injury for another individual. Such acts may include a recently expressed threat if the threat is such that, if considered in light of its context or in light of the person's recent previous acts or omissions, it is substantially supportive of an expectation that the threat will be carried out. **(27A-1-1 (4))**

2. Procedures for Apprehension

A. Petition Filing

Any person eighteen years of age or older may file a petition with the county board of mental illness alleging that the subject is severely mentally ill and in such condition that immediate intervention is necessary for the protection from physical harm of him/herself or others. The petition must be on a form, verified by affidavit, and must include the reasons for its filing and other information mandated by statute. **(27A-10-1)**

After examining the petition, the chair of the board of mental illness may order law enforcement or a designee to apprehend the person if the chair has a probable cause to believe that the person meets the commitment criteria. The person must be transported to an "appropriate regional facility." At this point, the person may not be taken to the South Dakota Human Services Center. Moreover, the person may not be detained in a jail unless there is no other appropriate regional facility available. In any event, the person may not be held in a jail for longer than twenty-four hours on a mental illness hold alone. **(27A-10-2)**

B. Apprehension by Peace Officer

A peace officer may apprehend a person even if a petition has not been filed. The officer, however, must have probable cause to believe that the person is severely mentally ill and in such condition that immediate intervention is necessary to prevent harm. The officer must transport the person to an appropriate regional facility other than the Human Services Center. The restrictions on use of a jail, explained above, continue to apply. A petition must be filed in a forthwith manner with the chair of the county board of mental illness. If a petition is not filed with the chair of the county board within twenty-four hours, the person must be released. **(27A-10-3; 27A-10-4)**

"Appropriate Regional Facility" is defined as: A facility designated by the Department of Human Services for pre-hearing custody. The facility must be as close as possible to where the person was apprehended. The facility must be no more restrictive of mental, social, or physical freedom than is necessary to protect the person or others from physical injury. In determining the least restrictive facility, considerations shall include the preferences of the apprehended person, the environmental restrictiveness of the setting, the proximity of the facility to the patient's residence, and the availability of family, legal, and other community resources and support. **(27A-1-1 (2))**

C. Right to Notice

Immediately after a person is apprehended, she/he must be notified both orally and in writing of the following:

a. The right to immediately contact a person of choice;
b. The right to immediately contact and be represented by an attorney;
c. That she/he will be examined by a qualified mental health professional, designated by the chair of the county board, within twenty-four hours of being taken into custody to determine whether custody should be continued;

d. The right to an independent examination if custody is continued; and the right to a hearing within five days, six, if there is a Saturday, Sunday, or holiday within that time period, or seven if there is a Saturday, Sunday, **and** holiday within that time period.
e. The cost of post commitment proceedings, including habeas corpus, and costs of court-appointed counsel are the person's responsibility and a lien may be filed upon the person's real and personal property to insure payment. **(27A-10-5)**

D. Examination Within Twenty-Four Hours

Within twenty-four hours after apprehension, the person will be examined by a qualified mental health professional designated by the chair of the county board.
Preceding the examination, the examiner must identify himself/herself and explain the nature and purpose of the examination. The person must be informed that the examination is being performed to assist in the determination of whether custody should continue. The person must also be informed that the results of the examination may be used as evidence in a commitment hearing. The examiner must immediately report the findings to the chair of the county board.

If the chair of the county board determines that the examination does not support finding that the person meets the involuntary commitment criteria, the person must be released. The county in which the person was apprehended must provide transportation back to that county, if the person so desires.

If the examination and an investigation of the petition indicate that the person does meet the commitment criteria, the board chair may order continued detainment in an appropriate regional facility. At this point, the person may be transported to the Human Services Center, but only if necessary. **(27A-10-6; 27A-10-7)**

E. Notice to Community Mental Health Center

Upon being informed of the apprehension of a person, the chair of the county board shall notify the area's community mental health center. **(27A-10-16)**

F. Request for Voluntary Admission

The chair of the county board shall determine whether a detained person may voluntarily admit him/herself into a facility or program. **(27A-10-7.1)**

3. The Hearing Process

A. Service of Notice

Certified copies of the petition and notice of hearing shall be personally served forthwith by the sheriff on the person prior to the hearing. The notice must include the following:

a. The time, date, and place of hearing;
b. The right to be represented by an attorney retained by the person or appointed by the board chair;
c. Notice of the twenty-four hour examination by a qualified mental health professional;
d. The qualified mental health professional and the defense lawyer have access to the person's medical records; and
e. The right of the person to obtain an independent examination at his/her own expense; if indigent, the county will bear the expense. **(27A-11A-5)**

B. Assignment of Counsel

If upon completion of the twenty-four hour examination, it is determined that a hearing shall be held, the board chair must immediately assign counsel to the person if she/he has not retained an attorney. In no instance may a person not be represented by counsel. **(27A-11A-7)**

C. Duties of Counsel

An appointed attorney shall represent the interests of the person, advocate the person's legal rights, and otherwise fully represent the person. The attorney shall serve as an advocate for the person rather than a guardian ad litem. **(27A-11A-26)**

D. Timing of Hearing

A person is entitled to an involuntary commitment hearing within five days after being taken into custody, within six, if there is a Saturday, Sunday, or holiday within that time period or within seven days if there is a Saturday, Sunday, **and** holiday within that time period. **(27A-10-8)**

E. Location of Hearing

The hearing shall be held in the county courthouse or such other place as the board chair may designate with due regard to the rights, safety, and comfort of the person. **(27A-11A-28)**

F. Personal Appearance and Right to Present Evidence

A person has the right to appear personally at the hearing and testify on his/her own behalf, but may not be compelled to do so. If a person decides not to appear, the board may not inquire into the reasons for that decision. The person has the right to require the attendance of witnesses, to cross-examine witnesses, and to present evidence. **(27A-11A-11)**

G. Closed Hearing

The board may exclude the public from attending a hearing. The board, however, must permit the attendance of any person requested to be present by the proposed patient. **(27A-11A-11)**

H. Pre-Hearing Treatment

If the person is receiving treatment prior to the hearing, the qualified mental health professional shall take all reasonable precautions to ensure that the person is not so affected by drugs or other treatment as to be hampered in preparing for or participating in the hearing. The board must be provided with a record of all treatment the person has received since being taken into custody. **(27A-11A-10)**

I. Testimony on Alternative Placements

An independent qualified mental health professional must assess the availability and appropriateness of treatment alternatives including treatment programs other than inpatient treatment. This mental health professional must testify at the hearing and explain what alternatives are or should be made available, what alternatives were investigated, and why any investigated alternatives are not deemed appropriate. **(27A-10-9)**

J. Rules of Evidence

The rules of evidence shall be followed at all hearings and reviews. **(27A-11A-24)**

4. The Hearing Determination

Upon completion of the hearing, the board may order the involuntary commitment of the person if it makes the following findings by clear and convincing evidence:

A. The person meets the involuntary commitment criteria in **SDCL 27A-1-2**, as explained above;

B. The person needs and is likely to benefit from the treatment which is proposed; and

C. The commitment is to the least restrictive treatment alternative. **(27A-10-9.1)**

"Least restrictive treatment alternative" is defined as the treatment and conditions of treatment which, separately and in combination, are no more intrusive or restrictive of mental, social, or physical freedom than necessary to achieve a reasonably adequate therapeutic benefit. The following considerations shall be taken into account in determining the least restrictive alternative:

1. The values and preferences of the patient;
2. The environmental restrictiveness of treatment settings;
3. The duration of treatment;
4. The physical safety of the patient and others;
5. The psychological and physical restrictiveness of treatments;
6. The relative risks and benefits of treatments to the patient;
7. The proximity of the treatment program to the patient's residence; and
8. The availability of family and community resources and support. **(27A-1-1 (11))**

If the above findings are not made, the board shall order that the person be released. The referring county shall provide the person with transportation to the county where he was taken into custody, if the person so chooses. **(27A-10-9.1)**

5. Duration of Commitment

Upon completion of the hearing, the Board of Mental Illness may order the involuntary commitment of the person for an initial period not to exceed **ninety days**. **(27A-10-9.1)**

6. Record of Proceedings

A court reporter shall attend all hearings of the county board and keep a stenographic or tape record of the proceedings. A person who has been committed may request a certified transcript or tape recording of the hearing. The person must pay for such transcript or recording unless indigent. **(27A-11A-2)**

7. Appeal

An order of involuntary commitment may be appealed to the circuit court. The person shall be advised of the right to appeal both verbally and in writing upon the termination of the hearing. **(27A-11A-25)**

8. Review Hearings

Within ninety days after the involuntary commitment of a person who is still under the commitment order, the county board shall conduct a review hearing to determine if the person continues to meet the commitment criteria. Notice of this hearing shall be given to the person and his/her attorney at least ten days in advance. If the person has not retained counsel, the board chair must appoint an attorney at least ten days in advance of the review hearing.

At the time of notice, the person and attorney shall be informed of all evidence that will be considered at the review hearing. Any evidence subsequently discovered shall be immediately transmitted to the person and attorney. The person is entitled to all rights and procedures applicable to an initial commitment hearing except that a new petition need not be filed.

If, upon completion of the review hearing, the board finds by clear and convincing evidence that the person continues to meet the commitment criteria, the board may order continued commitment to the same or alternative placement for a period not to exceed six months. The person is entitled to another review hearing within the six-

month period. If the board issues another order of continued commitment, the next review shall be held within six months after the order. If the second six-month review justifies continued commitment, the board may order continued commitment for up to twelve months. Subsequent reviews shall be conducted within each twelve months thereafter that the person remains under commitment. **(27A-10-14)**

9. Additional Review Hearings

The board may schedule review hearings in addition to those required by the above stated provision. **(27A-10-15)**

10. Noncompliance with Treatment Order

If a person ordered to undergo a program of involuntary treatment fails to comply with the order, the county board must conduct a hearing to determine compliance or noncompliance. If noncompliance is determined, the board may order an alternative program of treatment which is consistent with the commitment criteria. The person is entitled to representation by counsel and to notice delivered at least five days in advance of the hearing. **(27A-11A-21)**

11. Unsuccessful Treatment

If at any time while a person is under an order of commitment, it comes to the attention of the county board that the program of treatment has not been successful; the board shall conduct a hearing. This hearing must be held within five days, or six if there is a Saturday, Sunday, or holiday within that time period, or seven if there is a Saturday, Sunday, **and** holiday within that time period. The person shall be represented by counsel and be given at least five days notice of the hearing.

If the board finds that the program of treatment has not been successful, it shall order an alternative program of treatment consistent with the commitment criteria. The director of the facility to which a person is committed is under a duty to notify the county board whenever a treatment program has proven unsuccessful. **(27A-11A-22)**

12. Transfer of Patient

A person under an order of commitment may not be transferred to a more restrictive facility without a hearing before the county board prior to the transfer. The person has the right to be represented by an attorney and must be provided notice at least five days in advance of the hearing. The only exception is when the transfer is necessary to prevent the immediate danger of physical harm to the person or others. In such a case, the board chair may authorize the transfer pending the hearing. The hearing must be held within five days of the transfer or six, if there is a Saturday, Sunday, and holiday within that time period.

If upon completion of the hearing, the board finds by clear and convincing evidence that the transfer is in accord with the commitment criteria, the board may so order the transfer. The transfer hearing shall not substitute for any of the review hearings the person is otherwise entitled to. **(27A-11A-19)**

II. VOLUNTARY INPATIENT TREATMENT FOR ADULTS

1. Admission Criteria (27A-8-1)

A person, eighteen years of age or older, may apply to the South Dakota Human Services Center or other inpatient psychiatric facility for voluntary hospitalization. The person must execute a written application for admission and be capable of providing an informed consent to the admission.

"Informed consent" is defined as: Consent voluntarily, knowingly and competently given without any element of force, fraud, deceit, duress, threat or other form of coercion after conscientious explanation of all information that a reasonable person would consider significant to the decision in a manner reasonably comprehensible to general lay understanding. **(27A-1-1 (9))**

The person may be admitted if the following requirements are met:

a. If, after the examination by a staff psychiatrist, the facility director determines that the applicant is clinically suitable for inpatient treatment. If a staff psychiatrist is unavailable at the time of application, admission may be granted pending an examination by a staff psychiatrist within one working day;
b. A less restrictive treatment alternative is inappropriate or unavailable;
c. The applicant is in need of and will likely benefit from treatment which is available at the facility;
d. The requirements in **SDCL 27A-8-15** have been met. This section requires that before admission, an explanation be made to the applicant of the nature of inpatient status, including the types of treatment available, and restraints or restrictions to which she/he may be subject. This explanation must include the fact that the person's status may be converted to involuntary status under certain circumstances. The person must also be informed of all rights to which she/he is entitled; and
e. The applicant does not have medical needs that are beyond the capacity of the center of the facility.

Section **27A-8-15** also requires that the applicant give an informed consent to admission both orally and in writing upon an application form. The application form must contain specified information. A copy of the signed application form and a written statement of the patient's rights shall be given to the patient and any one other person designated by the patient.

2. Voluntary Status Required

An applicant for voluntary admission, who is clinically suitable for voluntary inpatient treatment, shall be admitted only on such voluntary status. If admission is denied, the facility must provide the person with a referral to other facilities or programs that may be appropriate. **(27A-8-16)**

3. Voluntary Admission by Guardian

If a person desires inpatient treatment but is incapable of providing an informed consent to this treatment, the person's next of kin may exercise a substituted informed consent to admission. The admission criteria continue to apply to the admission. Both guardian and the person must sign the application form. The patient is entitled to all the rights accorded other voluntary patients, including the right to immediate discharge upon written request. **(27A-8-18)**

4. Voluntary Admission by Next of Kin

If a person desires inpatient treatment but is incapable of providing an informed consent to this treatment, the person's next of kin may exercise a substituted informed consent to admission. The admission criteria continue to apply to these admissions. Both the next of kin and the person must sign the application form. The person may be admitted for a period not to exceed fourteen days.

During the fourteen-day admission period, the consenting next of kin must file a petition in circuit court for an order authorizing the admission. If a petition is timely filed, the admission of a non-objecting person may continue until the court can hold the hearing. If a petition is not timely filed, the person must be discharged upon the expiration of the fourteen-day admission period.

Notice of the hearing must be delivered to the next of kin and the patient. The next of kin and the patient's attendance at the hearing are required unless the court, for good cause, excuses attendance by the patient. The court may authorize the admission upon a finding that:

a. The person is voluntarily assenting to admission without any element of force, duress, threat, or other form of coercion; and
b. The voluntary admission criteria are met.

The person is entitled to all rights accorded other voluntary patients, including the right to immediate discharge upon written request. **(27A-8-19)**

5. Periodic Assessments

Thirty days after the voluntary admission of a patient and every ninety days thereafter, the facility director must review the patient's records and assess the need for continued inpatient treatment. If continued treatment is indicated, the director must request from the patient an oral and written affirmation of informed consent to continued admission. If the patient was admitted upon the substituted informed consent of a guardian or next of kin and continues to be incapable of exercising an informed consent, substituted informed consent to continuing admission must be obtained from the guardian or next of kin. A failure to obtain an affirmation of informed consent from the patient, guardian, or next of kin constitutes notice of intention to terminate inpatient treatment. **(27A-8-17)**

6. Release Procedures

A. Request for Release

An adult voluntary patient has the right to immediate discharge upon written notice of his intention to be released. The facility must promptly supply the patient with the written discharge form upon request. **(27A-8-10)**

B. Detainment After Request for Release

A voluntary patient who has submitted a written request for release may be detained for a period not to exceed twenty-four hours (excluding weekends or holidays) from receipt of the written notice if the facility has probable cause to believe that she/he meets the involuntary commitment criteria. The facility director must immediately notify the patient of this hold and explain its nature. The director must also notify the chair of the county board or a peace officer of the time of receipt of the patient's notice, the time the hold was initiated, the circumstances necessitating the hold, and the time a petition for involuntary commitment will be filed. This information must also be delivered to the patient.

If a petition is not filed with the chair of the county board within twenty-four hours of the facility's receipt of the patient's request for release (excluding weekends and holidays), the patient must be immediately discharged. If a petition is timely filed, the patient may be held pursuant to the involuntary commitment procedures explained above. **(27A-8-10.1)**

7. Notice of Release Procedures

Upon voluntary admission, at the end of the first six months of hospitalization, and annually thereafter, the patient shall be given a separate written notice of release procedures. A copy of these procedures shall also be given to any one other person the patent so designates. Release procedures must be prominently and permanently displayed in every psychiatric ward. **(27A-8-14)**

8. Conversion to Involuntary Status Without Request for Release

The facility may file a petition for the involuntary commitment of a voluntary patient even in the absence of a request for release. A petition may be filed only for the following reasons:

a. The facility has probable cause to believe the patient meets the involuntary commitment criteria; and
b. The patient, including one admitted upon a substituted informed consent of a guardian or next of kin, is unwilling or unable to consent to the treatment deemed necessary by the treating physician and there are not other appropriate treatments to which the patient is willing or able to consent; or
c. The patient is unwilling or unable to affirm consent to continued admission when statutorily required. **(27A-8-11.2)**

III. INDIVIDUAL RIGHTS

1. Application of Rights

Chapter 27A-12 governs the rights of any individual subject to the authority of the mental health code, either on a voluntary or involuntary basis. **(27A-12-1.1)**

2. Competence

No person may be deemed incompetent to exercise any right or privilege accorded citizens of South Dakota solely by reason of detention, admission, or commitment under the mental health code. **(27A-12-1.2)**

3. Privacy and Dignity

Each person has the right to a humane environment that affords appropriate individual privacy, individual dignity, and reasonable protection from harm. These rights shall be respected at all times and upon all occasions, including when a person is taken into custody, detained or transported. **(27A-12-1)**

4. Notice of Rights

A person is entitled to prompt oral and written notice of his/her rights upon entering a facility or program. A written list of rights shall be prominently displayed in an accessible location. **(27A-12-3)**

5. Rights Enumerated

Any person, if otherwise qualified, has the right to:

a. Refuse to be photographed or fingerprinted;
b. Remain silent and fully clothed;
c. Have access to
   -Toilet facilities upon request
   -His/her own money unless a conservator has been appointed;
   -To keep as much money in his/her personal possession as he/she deems is necessary;
   -To purchase personal articles;
   -A minimum of two hours exercise daily;
d. Receive any visitors during regular visiting hours; communicate with individuals outside the facility; send and receive unopened mail; adequate writing material, envelopes and stamps; access to a telephone; local calls without charge; long distance calls if paid for or charged to another number.
e. Wear his/her own clothes; keep his/her own toilet articles; adequate storage space;
f. Converse with others in private;
g. Receive prompt, adequate medical treatment;
h. Voluntary participation in religious services in accordance with personal needs, desires, and capabilities and also in accordance with the basic right to freedom of religion.

A. Reasonable Limitations

Reasonable limitations may be placed on the above-listed rights on an individual basis if essential to prevent the person from violating a law or to prevent substantial and serious physical or mental harm to himself or others. Each limitation must be approved by the facility director. **(27A-12-3.1)**

6. Spiritual Treatment

Each person has the right to treatment by spiritual means through prayer. **(27A-12-3.2)**

7. Access to Rights Protection Services

A person has the right to engage in private communications in appropriate facilities with any available right protection service or system such as the South Dakota Advocacy Services. **(27A-12-3.3)**

8. Access to Attorney and Physicians

A person may communicate with a legal representative or a private physician subject to the facility's normal access restrictions. The person's legal representative shall have access to all records and information pertaining to the person. **(27A-12-3.18)**

9. Labor

A person may perform labor for a facility only upon a voluntary and compensated basis. One half of such compensation is exempt from collection for services provided by the facility. Discharge may not be conditioned on performance of labor. **(27A-12-3.4; 27A-12-3.5)**

10. Treatment Programming

A. Each person shall have a physical and mental examination within forty-eight hours (excluding Saturdays, Sundays, and holidays) of admission. **(27A-12-3.8)**

B. Each person has the right to a comprehensive individualized treatment program developed by appropriate qualified mental health professionals, including a psychiatrist. The treatment plan may not consist solely of chemical or drug therapy unless supported by sufficient psychiatric and medical opinion.

A person has the right, according to his/her capabilities, to participate in the planning of services to be provided. This right includes participation in the development, review, and revision of the treatment program. The person is entitled to a reasonable explanation of:

a. Such persons' mental and physical condition;
b. The objective of treatment;
c. The nature and significant possible adverse effects of recommended treatments;
d. The reasons why a particular treatment is considered appropriate;
e. The reason for any limitation on rights; and
f. Any appropriate and available alternative treatments, services, and types of providers. **(27A-12-3.6)**

C. Treatment programs shall be designed to achieve discharge at the earliest possible time and to maximize each person's development and skill acquisition. A treatment team qualified mental health professional must periodically review, follow-up, and update all individualized programs. **(27A-12-3.6)**

D. Each person has the right to an aftercare program which outlines available services and recommendations for continued post-discharge placement or treatment. Participation in the plan is discretionary and refusal to participate shall not be a reason for continued detention. **(27A-12-3.7)**

E. Within ten days after commitment, the facility or program director shall review the need for continued commitment and assess whether an individualized treatment program has been implemented. If a treatment program has not been implemented within ten days, the person shall be released immediately unless he/she agrees to continue treatment on a voluntary basis. **(27A-12-3.9)**

F. Within thirty days after the above review and within every ninety days thereafter, the director shall assess whether commitment should be continued. **(27A-12-3.9)**

11. Transfer From Involuntary to Voluntary Status

An involuntarily committed person has the right to apply for a transfer to voluntary status. The transfer shall be forthwith granted unless the person is unable to understand the nature of voluntary status or the transfer would not be in the best interests of the person. **(27A-12-3.10)**

12. Emergency Medical Procedures

Medical procedures may be performed without consent or court order only in a life-threatening emergency where there is not time to obtain consent or court authorization; or, if the patient is incapacitated as defined in **SDCL 34-12C-1** and consent is obtained pursuant to **SDCL 34-12C. (27A-12-3.11)**

13. Experimental or Intrusive Procedures

A person has the right to refuse to be subjected to research and experimental or intrusive procedures, including electroconvulsive therapy. Prior to the initiation of such procedures, the facility must obtain the person's written informed consent. If the attending physician determines that the person is incapable of exercising informed consent, such treatment may be provided only if ordered by a circuit court after a hearing. If the court determines that the person is incapable of exercising an informed consent, the court may exercise a substituted judgement on the administration of the treatment. The court, however, may not authorize sterilization for a person incapable of exercising an informed consent. **(27A-12-3.12; 27A-12-3.20)**

14. Refusal of Treatment—Psychotropic Medication

A. Treatment Refusal

A person has the right to refuse **any** treatment. **(27A-12-3.12)**

B. Psychotropic Drug Refusal

1. Right to Refuse

If an involuntarily committed person refuses the administration of psychotropic drugs, psychotropic medication may be administered if it is ordered by a court under the criteria in **SDCL 27A-12-3.15.**

2. Court Petition

A facility may petition the circuit court for authority to administer psychotropic drugs to an involuntarily committed person if, in the opinion of the director or attending psychiatrist and the person's treating physician, the drugs will be medically beneficial and are necessary because:

a. The person presents as a danger to self or others;
b. The person cannot improve or his/her condition may deteriorate without the drugs; or
c. The person may improve without the drugs but only at a significantly slower rate. **(27A-12-3.13)**

3. Notice—Time of Hearing

The petition and notice of hearing shall be personally served upon the person immediately upon filing of the petition. The notice of hearing shall include:

a. Notice of time, date, and place of hearing;
b. Notice of right to counsel and the appointment of counsel if indigent; and
c. Notice of the right to an independent evaluation at the person's expense or if indigent, the county's expense; and

d. The cost of any commitment proceedings, treatment, medication and any hearing relating to medication, any post-commitment proceedings, including habeas corpus, and costs of court-appointed counsel are the person's responsibility and a lien may be filed upon the person's real and personal property to insure payment.

If counsel has not been retained, the court shall appoint counsel immediately upon filing of the petition. A date shall be set for the hearing within fifteen days of the filing of the petition. The hearing shall be a priority on the court's calendar. One seven-day continuance may be allowed upon a showing of good cause. **(27A-12-3.14)**

4. Hearing Determination on Competency

The court may exercise a substituted judgement on the administration of psychotropic drugs only upon a showing by clear and convincing evidence that the person is incapable of making an informed treatment decision and the drugs are essential under the criteria listed in #2 above. **(27A-12-3.15)**

5. Time Limit for Court Order

A court order authorizing the administration of psychotropic drugs may not exceed one year. In any event, the court's order shall terminate:

a. If the person is judicially restored as competent to make the treatment decision; or
b. The treating physician or medical director/consulting psychiatrist determine that the drugs are no longer necessary. **(27A-12-3.16)**

6. Review of Drug Treatment

The treating physician and medical director/consulting psychiatrist must review the need for continued drug treatment by personal examination of the person at least every thirty days. **(27A-12-3.16)**

7. Emergency Administration of Psychotropic Medication

In an emergency, to prevent serious physical harm to the person or others, a physician may order that psychotropic medication be given to the person for up to ten (10) days. Psychotropic medication may also be given for up to ten (10) days if the attending physician and one other physician determine that the medication is necessary to prevent significant deterioration of the person's mental illness and that the person's potential for improvement would be permanently impaired if the psychotropic medication was not given. **(27A-12-3.23)**

8. Prohibition of Psychosurgery, Aversive Stimuli, and Substantial Deprivations

No person shall be administered or subjected to psychosurgery, aversive stimuli, or substantial deprivation.

"Aversive Stimuli" is defined as: Anything which, because it is believed to be unreasonable unpleasant, uncomfortable, or distasteful to the person, is administered or done to the person for the purpose of reducing the frequency of a behavior but does not include authorized restrictive treatment procedures.

"Substantial Deprivations" is defined as: Includes the withdrawal or withholding of basic necessities or comforts which is intended to subject the person to significant discomfort, inconvenience, or unpleasantness. **(27A-12-3.22)**

9. Restrictive Treatment Procedures

Restrictive Treatment procedures which impose physical restrictions on the person:

a. Must be part of an individualized treatment program that sets out conditions justifying its use and approved by a peer committee review;
b. May not be used as punishment or for convenience of staff;
c. May be implemented only as necessary to prevent assaultive or otherwise harmful behaviors with specific documentation justifying its use;
d. If physical restraints or seclusion in a separate room is employed, appropriate attention shall be paid every fifteen minutes to the person;
e. Shall require a written order at least every fifteen days during the first sixty days of the implementation and every thirty days thereafter;
f. May not be considered seclusion or restraint if carried out as a part of an approved behavioral treatment program. **(27A-12-6.1)**

10. Seclusion or Restraint

The use of seclusion or restraint:

a. Requires clinical justification and shall be employed only to prevent immediate harm to the person or others;
b. May not be employed if less restrictive means of restraint are feasible; the rationale for use must address the inadequacy of less restrictive intervention techniques;
c. May not be employed as punishment or for the convenience of staff;
d. Must be authorized by a qualified mental health professional, physician's assistant, or nurse practitioner;
e. Justification of use shall be supported by a personal clinical assessment of the person and documented in the person's records;
f. May not exceed one hour, at which time an order from a qualified mental health professional, physician's assistant, or nurse practitioner is required if seclusion or restraint is to be continued; such order must be time-limited and shall not exceed twenty-four hours;
g. May not be used in a manner that causes undue physical discomfort, harm, or pain to the person; appropriate attention shall be paid every fifteen minutes to the person unless more frequent attention is warranted.

11. Grievances

A person may assert grievances with respect to infringement of rights. The person is entitled to have a grievance considered in a fair, timely, and impartial procedure which provides meaningful review. **(27A-12-32.1)**

12. Habeas Corpus

Any person involuntarily committed, confined, detained, or restrained may apply for a writ of habeas corpus. If the court finds that an involuntarily committed person continues to meet the commitment criteria, continued commitment may be authorized. The person may apply for another writ upon alleging that the commitment criteria are no longer met. **(27A-12-32.2)**

13. Exercise of Rights

The provisions of the mental health code may not be construed as replacing or limiting any other rights, benefits, or privileges. The exercise of rights afforded by the code are not subject to any reprisal, including reprisal through the actual or threatened denial of any treatment, benefits, privileges, or other rights. **(27A-12-33.1)**

IV. ACCESS TO AND CONFIDENTIALITY OF INFORMATION

1. All records of proceedings are subject to the confidentiality and access provisions of Chapter 27A-12. Any records of an involuntarily detained person who is released prior to or upon completion of a commitment hearing shall be sealed. **(27A-11A-3)**

2. If a person is admitted, involuntarily committed, or discharged from the Human Services Center, his next of kin or guardian shall be notified unless notification is determined by the attending physician to be detrimental to the person. **(27A-12-34)**

3. A complete statistical and medical record shall be kept for each person receiving mental health services or being detained under the code. A person has the right to access, upon request, to his mental health records. The person, however, may be refused access to:

a. Information in the records provided by a third party under assurance that the information remain confidential; and

b. Specific material in the records if the qualified mental health professional responsible for the mental health services concerned has made a determination in writing that access would be detrimental to the person's health. However, the material may be made available to a similarly licensed qualified mental health professional selected by the person; this professional may, in the exercise of professional judgement, provide the person with access to any or all parts of the material or otherwise disclose the information contained in the material to the person. **(27A-12-25; 27A-12-26.1)**

4. The following information is to be kept confidential and not open to public inspection unless specifically excepted as noted: **(27A-12-27)**

A. Information acquired by a peace officer pursuant to authority under the Code;

B. Records of concluded proceedings for which the information was acquired subject to order of the circuit court;

C. Information in the record of the person and other information acquired in the course of providing mental health services unless:

a. Both the holder of the records and the person, the parent of a minor, or a guardian, consent to disclosure;

b. Absent consent, only if requested under the following circumstances:

1. Pursuant to orders of subpoena of a court of record or subpoenas of the Legislature;
2. To a prosecuting or defense attorney or to a qualified mental health professional as necessary to participate in a proceeding governed by this title;
3. To an attorney representing a person who is presently subject to the authority of this title;
4. If necessary in order to comply with another provision of law;
5. To the Department of Human Services if the information is necessary for the discharge of a responsibility placed by law;
6. To a state's attorney or the attorney general for purpose of investigation of an alleged criminal act either committed by or upon a patient of the Human Services Center

5. Any release of information by a holder of records shall be:

A. Approved by the facility director; recorded to include information released, to whom, the date, and purpose of the release. The identity of the person to whom the information pertains may not be disclosed unless germane;

B. Any person receiving confidential information shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained. **(27A-12-31; 27A-12-32)**

V. DISCHARGE

1. Discharge of Voluntary Patient

The facility director may at any time discharge a voluntary patient whom the director deems suitable for discharge. **(27A-14.1)**

2. Discharge of Ward

If the facility director or attending psychiatrist determines that a ward no longer requires inpatient treatment and has been accepted for placement in a community setting, the guardian shall remove the ward within three days of notification. Failure to so remove shall result in notice to the guardianship court for further disposition. **(27A-14-1.1)**

3. Discharge Prior to Commitment Hearing

A. If a person is detained at the Human Services Center pending the commitment hearing, he/she shall be released upon a determination by the administrator that the commitment criteria are not met. Following the release, the referring county shall provide the person with transportation to the county where he was taken into custody, if the person so chooses. **(27A-14-1.2)**

B. If the director of a facility in which a person is detained prior to a commitment hearing determines that the person does not meet the commitment criteria, the director shall so notify the chair of the county board. If the chair agrees, the person shall be released. Transportation to the county where the person was taken into custody shall be provided by the referring county, if the person so desires. **(27A-14-1.3)**

4. Discharge of Involuntarily Committed Patient

An involuntarily committed person shall be discharged when the director of the facility or program of commitment determines that the patient no longer meets the commitment criteria.

The county board must be notified of the discharge and provide the patient with transportation to his/her residence within forty-eight hours, if the patient so desires. **(27A-14-2; 27A-14-3)**

5. Provisional Discharge

A patient may be provisionally discharged. The administrator must notify the county board of the provisions of the discharge which may not extend beyond the duration of the original commitment. **(27A-14-4)**

6. Leave Status

A patient, upon approval of the director, may be placed on a leave status from the facility. A leave may not exceed thirty days and the status may not extend beyond the duration of any involuntary commitment order. While on leave, an involuntarily committed patient shall receive all reviews and hearings mandated by law or be discharged from the commitment order. **(27A-14-1.4)**

7. Public Assistance

The Secretary of Social Services shall provide methods whereby a patient shall be assisted in qualifying for all available public assistance benefits provided by state or federal law. **(27A-14-14)**

VI. COUNTY BOARD OF MENTAL ILLNESS

1. Each county shall have a county board of mental illness, although two or more counties may jointly contract to establish one board serving all contracting counties. **(27A-7-1)**

2. A county board of mental illness shall consist of two people who shall be residents of the county and appointed by the board of county commissioners for a three-year non-consecutive term. A law trained magistrate or lawyer, who need not be a resident of the county, shall serve as the board's chair. The chair shall be appointed by the presiding judge of the county's circuit court.

   The state's attorney for the county may not serve on the board of mental illness. The appointing authority may appoint alternative board members. **(27A-7-1)**

3. In the case of the temporary absence or inability of any member or alternate to serve, the remaining board members shall temporarily appoint replacements so that the original composition of the board is retained. **(27A-7-3)**

4. All members of a county board are required to participate in a training and certification program prior to undertaking their duties and at least every three years thereafter. The Department of Human Services is responsible for conducting this training and providing manuals and forms. **(27A-7-9)**

5. The county board has jurisdiction over all petitions for involuntary commitment and is responsible for the safekeeping of persons subject to involuntary commitment within its county. The board may do any act of a court which is necessary and proper for the discharge of its duties. **(27A-7-4)**

6. If it appears that any board member has a conflict of interest, he/she may be removed by a filing of an affidavit with the board chair. Unless the affidavit appears clearly frivolous, it shall be granted. In the event of disqualification, a duly designated alternate or temporary replacement shall serve. **(27A-7-3.1)**

7. Board members shall be compensated at an hourly rate as determined by the county commissioners. Members shall also be reimbursed for mileage and other actual expenses incurred in the performance of their duties. **(27A-7-8)**

VII. OTHER PROVISIONS

1. State Mental Health Programs: See SDCL Chapter 27A-3.

2. South Dakota Human Services Center: See SDCL Chapter 27A-4.

3. Local Mental Health Centers: See SDCL Chapter 27A-5.

4. Interstate Cooperation in Mental Health Services: See SDCL Chapter 27A-6.

5. Costs of Care and Treatment in State Facilities: See SDCL Chapter 27A-13.

6. Treatment of Minors: See SDCL Chapter 27A-15.